FILED
AUG 11 1949

IN THE

Supreme Court of the United States

October Term, 1949.

No. 248

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

ROBERT W. KENNY,
629 South Hill Street,
Los Angeles 14, California,
Attorney for Petitioner.

Of Counsel:
CHARLES H. HOUSTON,
Washington, D. C.
BARTLEY C. CRUM,
New York, N. Y.
MARGOLIS AND McTERNAN,
By Ben Margolis and William Merrick,
Los Angeles, California.
CHARLES J. KATZ,
Los Angeles, California.
MORRIS E. COHN,
Los Angeles, California.
WOLF, POPPER, ROSS AND WOLF,
By Martin Popper,
New York, N. Y., and
Washington, D. C.
SAMUEL ROSENWEIN,
New York, N. Y.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

PAGE

Statement of matter involved 2

Statement as to jurisdiction 20

Statutes involved 20

Questions presented 23

Reasons for granting the writ 27

I.

The Committee's utilization of congressional power, as an agency of government, to compel disclosure of private political opinion and association is forbidden: (a) by the First, Fourth and Fifth Amendments as unwarranted invasion into the private rights of individuals, and (b) by the Ninth and Tenth Amendments as unwarranted invasion into the area of governmental powers reserved exclusively to the sovereign people 36

A. The Committee's utilization of congressional power, as an agency of government, to compel disclosure of private political opinion and association is forbidden by the First, Fourth and Fifth Amendments as unwarranted invasion into the private rights of individuals 36

(1) The oath ex officio 37

(2) The right of the individual to be let alone with respect to his beliefs and associations 43

PAGE

B. The Committee's utilization of congressional power, as an agency of government to compel disclosure of private political opinion and association, is forbidden by the Ninth and Tenth Amendments as an unwarranted invasion into the area of governmental power reserved exclusively to the sovereign people 51

(1) Petitioner's position 51

(2) The opinion below 55

II.

This particular inquiry into the Hollywood motion picture industry lay entirely outside the lawful bounds of the power of the House Committee because it constituted a censorship of the content of motion pictures and thereby violated the First Amendment 61

III.

The Committee as an agency of government used its powers under Section 121 of legislative Reorganization Act of 1946 to impose a blacklist against the petitioner and other named individuals, and thereby placed itself above the Constitution and disregarded the elementary requirements of due process of law in that: (1) It usurped the power to legislate confided by the Constitution to the concurrent action of both Houses of Congress and the President; (2) It exercised such power in a manner prohibited even to the entire legislature; (3) It invaded the area delegated exclusively to the judiciary; and (4) It exercised such judicial power in a manner prohibited even to the judiciary 69

PAGE

IV.

The statute creating the House Committee on Un-American Activities on its face and particularly as construed and applied is unconstitutional in that: (1) It permits investigation of, and as construed and applied has been used to investigate, the content of speech and ideas, an area in which no legislation is possible thereby exceeding the boundaries of legislative power under Article I of the Constitution; (2) It permits the very process of investigation to be used, and as generally construed and applied it has been used, to expose and stigmatize the content of any and all speech and ideas disapproved by the members of the Committee, thereby impeding and placing a burden upon free thought, speech and association in violation of the First, Ninth and Tenth Amendments, and (3) The statute is so vague and ambiguous that, as applied in a criminal case, it violates the First Amendment and the due process clause of the Fifth Amendment..... 77

V.

The trial court committed numerous prejudicial errors and denied petitioner a fair trial under the Sixth Amendment by its rulings, instructions and comments..... 88

A. The Subcommittee before which petitioner appeared was not shown to be a lawfully constituted tribunal, and the trial court committed prejudicial error by reason of its rulings and instructions which prevented the jury from considering this fact in reaching its verdict..... 88

PAGE

B. The charge of the court that (a) a non-responsive reply, or (b) a reply that seems unclear to the jury is per se conclusive proof of a refusal to answer, and the comments of the court to the effect that petitioner was not trying to answer the question constituted prejudicial error 95

C. The trial court committed prejudicial error in refusing to permit cross-examination of the principal prosecution witness, J. Parnell Thomas.....101

D. The court committed prejudicial error in excluding petitioner's evidence that the Committee failed to certify to the House of Representatives all of the material facts relating to the alleged failure to answer.....104

E. Utilization of government employees as jurors in this particular case involving the House Committee on Un-American activities as the governmental agency directly interested in the prosecution, constituted prejudicial error 105

F. The trial court erred in denying petitioner's challenge and motion to dismiss the jury panel in that (1) the use of questionnaire containing the question whether the prospective juror holds any "views opposed to the American form of government" was improper and invalidated the jury panel, particularly in the present case, and (2) the petitioner's right to an impartial jury drawn from a cross-section of the community was abrogated by the establishment of qualifications for jury service other than those required by statute and which limited the representative character of the jury.....108

TABLE OF AUTHORITIES CITED

CASES	PAGE
Arine v. United States, 10 F. 2d 778	103
Barnes, Matter of, 207 N. Y. 108	31, 45
Barsky v. United States, 167 F. 2d 241	59, 68
Bihn v. United States, 328 U. S. 633	99
Bollenbach v. United States, 326 U. S. 606	100, 103
Bowe v. Commonwealth, 320 Mass. 230	51
Boyd v. United States, 116 U. S. 616	32, 43, 48
Bridges v. California, 314 U. S. 252	42, 52, 54, 57, 68
Bridges v. Wixen, 326 U. S. 135	51, 59
Brown v. Baskin, 78 Fed. Supp. 933	42
Cantwell v. Connecticut, 310 U. S. 296	52
Carter v. Carter Coal Co., 298 U. S. 238	81
Catlette v. United States, 132 F. 2d 902	71
Chapman, In re, 166 U. S. 661	32, 104
Christoffel v. United States, No. 528, Oct. Term 1948, decided June 20, 1949	33, 34, 90, 91, 93
Cline v. Frink Dairy Co., 274 U. S. 445	87
Coffin v. United States, 156 U. S. 432	47
Coleman v. Miller, 307 U. S. 456	94
Crawford v. United States, 212 U. S. 193	107
Cummings v. Missouri, 71 U. S. 277	40, 42, 63, 71
De Jonge v. Oregon, 299 U. S. 353	51, 52
Edward's case, 13 Co. Rep. 9, 77 Eng. Rep. 1421	38
Estep v. United States, 327 U. S. 114	76
Federal Trade Commission v. American Tobacco Co., 264 U. S. 298	58
Fields v. United States, 164 F. 2d 97, 82 U. S. App. D. C. 354	96
Fleishman v. United States (U. S. C. A.-D. C. No. 9852, decided April 8, 1949, Govt. Petition for cert., No. 838, Oct. Term, 1948)	93

PAGE

Frankfeld, Ex parte, 32 Fed. Supp. 915 32
Gideon v. United States, 52 F. 2d 427 109
Gitlow v. New York, 268 U. S. 652 52
Glasser v. United States, 315 U. S. 60 110
Greenfield v. Russell, 292 Ill. 392 32
Grosjean v. American Press, 297 U. S. 233 ..... 54, 62, 63, 86
Hague, Ex parte, 150 Atl. 322 45
Hannegan v. Esquire, 327 U. S. 146 ..... 61, 63
Harriman v. Interstate, 211 U. S. 407 32
Harris v. United States, 331 U. S. 145 34
Hearst v. Black, 87 F. 2d 68 32
Herndon v. Lowry, 301 U. S. 242 52
Interstate Commerce v. Brimson, 154 U. S. 447 32
Jones v. Opelika, 319 U. S. 103 ..... 53, 63
Jones v. S. E. C., 298 U. S. 1 ..... 32, 48, 76
Kansas v. Colorado, 206 U. S. 46 ..... 81, 82
Kilbourne v. Thompson, 103 U. S. 164 ..... 31, 58
Kovacs v. Cooper, 93 L. Ed. (Adv. Op.) 379 79
Kraus v. United States, 327 U. S. 614 99
Kwock Jan Fat v. White, 253 U. S. 454 104
Leubuscher v. Commissioner, 54 F. 2d 998 79
Marshall v. Gordon, 243 U. S. 521 32
Martin v. Hunter's Lessee, 1 Wheat. 304 ..... 52, 81
McCulloch v. Maryland, 4 Wheat. 316 ..... 52, 81
McGrain v. Daugherty, 273 U. S. 175 ..... 32, 45, 76, 82
Meyers v. United States, 171 F. 2d 800 90
Murdock v. Pennsylvania, 319 U. S. 105 ..... 53, 54, 63
Murphy and Glover Test Oath Cases (1867), 41 Mo. 340 40
Near v. Minnesota, 283 U. S. 697 66
Newport Bridge Co. v. United States, 105 U. S. 470 52

PAGE

Niznick v. United States, 173 Adv. F. 2d 328 ..... 75, 76
Olmstead v. United States, 277 U. S. 438 45
Pacific Railroad Commission, 32 Fed. 241 31
Parker v. County of Los Angeles, Oct. Term 1949, No. 49 28
Patton v. United States, 281 U. S. 276 100
People v. Cleveland, 271 Ill. 226, 110 N. E. 843 94
People v. Webb, 5 N. Y. Supp. 855 45
Quercia v. United States, 289 U. S. 469 100
Respublica v. Gill, 3 Yates 429, 161 U. S. 633 42
Schechter v. United States, 295 U. S. 495 82
Schneiderman v. United States, 320 U. S. 118 ..... 51, 52, 59, 80
Screws v. United States, 325 U. S. 91 ..... 71, 76
Shelley v. Kraemer, 334 U. S. 1 78
Sinclair v. United States, 279 U. S. 263 58
Sinclair v. United States, 279 U. S. 747 32
Smith v. Texas, 311 U. S. 128 110
State ex rel. School District of Afton v. Smith, 336 Mo. 703, 80 F. 2d 858 94
Thiel v. Southern Pacific Co., 328 U. S. 217 110
Thomas v. Collins, 323 U. S. 516 ..... 51, 52, 53, 54, 57, 79, 83
Thornhill v. Alabama, 310 U. S. 88 ..... 53, 66, 83, 84
United States v. Ballard, 322 U. S. 78 79
United States v. Ballin, Joseph & Co., 44 U. S. 1 91
United States v. Butler, 297 U. S. 1 81
United States v. Classic, 313 U. S. 299 ..... 71, 76
United States v. Curtis, 107 U. S. 671, 27 L. Ed. 534 94
United States v. Dennis, cert. granted June 27, 1949, No. 436 ..... 34, 105, 107
United States v. Harris, 106 U. S. 629 81
United States v. Lovett, 328 U. S. 303 ..... 71, 72, 76, 78
United States v. Murdock, 290 U. S. 392 ..... 96, 100

PAGE

United States v. Norris, 300 U. S. 564 ..... 32, 90
United States v. Paramount, 334 U. S. 131 61
United States v. Reese, 92 U. S. 214 87
United States v. Seymour, 50 Fed. 2d 930 90
United States v. Smith, 286 U. S. 6 94
United States v. Trierweiler, 52 Fed. Supp. 4 71
Watts v. Indiana, No. 610, Oct. Term, 1948 40
West Virginia v. Barnette, 319 U. S. 624 ..... 33, 55, 83
Whitney v. California, 274 U. S. 357 52
Wilson v. United States, 149 U. S. 60 39
Winters v. New York, 333 U. S. 507 87
Yick Wo v. Hopkins, 118 U. S. 356 ..... 52, 84

MISCELLANEOUS

Chafee, Free Speech, p. 529 62
Congressional Globe, 29th Cong., 1st Sess., 1845-46, App. p. 455 50
Congressional Globe, 34 Cong., 3rd Sess., 439, 440, Jan. 23, 1857 31
Congressional Record, Nov. 24, 1947, p. 10890 10
Dimock, Congressional Investigating Committees, pp. 161, 162, 163 32
Executive Order No. 9835 106
Funk and Wagnalls International Dictionary (1935 Ed.), p. 1985 79
House of Representatives Rep. No. 2, 76th Cong., 1st Sess., 13 (1939) 82
House of Representatives Rep. No. 1, 77th Cong., 2nd Sess., 16 (1940) 82
House of Representatives Report No. 2742, 79th Cong., 2nd Sess., 16 (1940) 82
Lea, History of the Inquisition, pp. 400, 405 37

PAGE

Maguire, Attack of the Common Lawyers on the Oath Ex Officio, in Essays in History and Political Theory, Harvard (1936), p. 199 38

McGeary, The Developments of Congressional Investigative Power, p. 104 83

New York Herald-Tribune, Dec. 2, 1947, White 50

Report of the Joint Committee on the Organization of Congress—pursuant to House Cong. Res. 18—Rep. No. 1011 in Sec. 1, Subd. 6 91

Swisher, Stephen J. Field, Craftsman of the Law (Wash. 1930), p. 152 42

25 Who's Who, 1948, p. 1436 2

Woodley, Thaddeus Stevens (Pa. 1934) 48, 49

HOLY BIBLE

Matthew 26:33 48

STATUTES

Act of Aug. 22, 1935, Chap 605 (49 Stats. 682) 22

Act of June 22, 1938, Chap. 595 (54 Stats. 942; 2 U. S. C., Sec. 194) 104

Act of June 25, 1948, Chap. 646 (62 Stats. 869, 28 U. S. C., Sec. 1254, Subsec. 1) 20

Code for the District of Columbia, Title XI, Sec. 1417 ..... 22, 108

Legislative Reorganization Act of 1946, Sec. 121 ..... 16, 88, 91

Legislative Reorganization Act of 1946, Sec. 121(b) (P. L. 601, Chap. 753, 79 Cong., 2d Sess., 60 Stat. 828, amends Rule XI(1)(2) of Rules of the House of Representatives) 21, 78, 82

Legislative Reorganization Act of 1946, Sec. 133(b) 94

Public Law 601 30

Revised Statutes, Sec. 102 (Chap. 594, Act of June 22, 1938, 52 Stat. 942, U. S. C., Title II, Sec. 192) 1, 20

Rules of the Supreme Court, Rule 38, par. 7 2

PAGE

United States Code, Title 2, Sec. 192 31
United States Constitution, Art. I, Sec. 9 ..... 24, 25
United States Constitution, First Amendment 4, 24, 25, 32, 36, 44, 45, 58, 60, 79, 87
United States Constitution, Fourth Amendment 24, 25, 36, 44
United States Constitution, Fifth Amendment 24, 25, 36, 39, 44, 71, 87
United States Constitution, Sixth Amendment 26
United States Constitution, Ninth Amendment 24, 25
United States Constitution, Tenth Amendment 24, 25

TEXTBOOKS

34 American Bar Association Journal, p. 15 27
21 American Political Science Review, p. 47, Galloway, Investigative Function of Congress 83
1 Baylor Law Review, p. 212 27
4 Blackstone's Commentaries, pp. 325-327 43
47 Columbia Law Review, p. 416 27
33 Cornell Law Quarterly, p. 565 27
2 Cooley, Constitutional Limitations, 8th Ed., p. 886 62
1 de Tocqueville, Democracy in America (N. Y. 1946), p. 196 51
3 Elliott's Debates, pp. 445-449 39
3 Encyclopedia of Social Sciences, p. 290, Laswell, Censorship 62
6 Encyclopedia of Social Sciences, p. 449, Laski, Freedom of Association 51
26 Georgetown Law Journal, pp. 905, 918, Cousens, Investigations Under Legislative Authority 83
37 Georgetown Law Journal, p. 104 27
172 Harper's, p. 171, Fredrich, Teacher's Oaths 40
15 Harvard Law Review, p. 615 (Wigmore) 37

PAGE

60 Harvard Law Review, p. 1193, Gellhorn, Report on a Report of the House Committee on Un-American Activities.... 27

61 Harvard Law Review, p. 592, O'Brien, Loyalty Tests and Guilt by Association..... 27

Horne, Mirrour of Justices (Wash. 1903), Sec. 108, p. 245; Subsec. 10, p. 246..... 37

3 Howard, State Trials, p. 1315..... 38

43 Illinois Law Review, p. 253..... 27

46 Michigan Law Review, p. 521..... 27

47 Michigan Law Review, p. 181, Nutting, Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs..... 50

47 Michigan Law Review, p. 191..... 27

27 Nebraska Law Review, p. 608..... 27

38 New Republic, p. 329, Frankfurter, Hands Off the Investigators 32

2 Rutgers Quarterly Law Review, p. 125..... 27

22 Southern California Law Review, p. 464..... 27

23 St. John's Law Review, pp. 1-67, 243-290, Reppy, The Specter of Attainder in New York..... 41

26 Texas Law Review, p. 816..... 27

14 University of Chicago Law Review, p. 256..... 27

15 University of Chicago Law Review, p. 544, Letter to President from Yale Law School Faculty..... 27

17 University of Cincinnati Law Review, p. 264..... 27

74 University of Pennsylvania Law Review, p. 691, Potts, Power of Legislative Bodies to Punish for Contempt..... 83

21 Virginia Law Review, pp. 763, 771, 787, R. Carter Pittman 39

Wigmore on Evidence (3rd Ed.), par. 785..... 97

IN THE

Supreme Court of the United States

October Term, 1949.

No.....

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, John Howard Lawson, prays that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia, rendered on June 13, 1949. On June 16, 1949, petitioner moved the Court of Appeals for an extension of time to July 5, 1949, to file a petition for rehearing. This motion was denied on June 23, 1949. On motion of petitioner, he was granted an extension of 30 days to August 12, 1949, in which to file this petition in this Court.

The petitioner was indicted under Rev. Stat., sec. 102, as amended by C. 594, Act of June 22, 1938, 52 Stat.

942, U. S. C., Title II, sec. 192 [J. A. 9];[1] was found guilty by a jury verdict on the 19th day of April, 1948 [J. A. 43]; and thereafter, on the 21st day of May, 1948, was sentenced to one year in jail and fined $1,000.00 [J. A. 44].

The petitioner perfected an appeal to the United States Court of Appeals, for the District of Columbia. While the appeal was pending in the Court of Appeals, the petitioner filed in this Court a petition for writ of certiorari to the United States Court of Appeals for the District of Columbia (No. 334, Oct. Term, 1948). Said petition was denied November 8, 1948. Thereafter, the Court of Appeals affirmed the trial court judgment and this petition is directed to said judgment of affirmance. The opinion below has not yet been officially reported.

Statement of Matter Involved.

Petitioner, John Howard Lawson, a dramatist and screen writer (25 Who's Who, 1948, p. 1436) was summoned as a witness by the House Committee on Un-American Activities (hereinafter referred to as "the Committee") to testify at the hearings described below [J. A. 188].

Between October 20 and October 30, 1947, members of the Committee, purporting to act as a sub-committee, held hearings, in Washington, D. C., on the subject, as designated by them, "Communist Infiltration of the Motion Picture Industry" [J. A. 197].

The petitioner was not a voluntary witness. He appeared in response to subpoena served upon him at his residence in California [J. A. 381].

---

[1]Pursuant to paragraph 7 of Supreme Court Rule 38, there are filed herewith copies of the joint appendix printed for use in the United States Court of Appeals, for the District of Columbia. References "J. A." are to pages of that printed record.

At the outset of the hearings (according to petitioner's offer of proof), counsel for petitioner presented to the Committee a motion to quash the Committee's subpoena [rejected Exhibits 4 and 5 for identification, J. A. 394-406], and were advised by the Chairman that the motion should be renewed before petitioner was called to the stand [J. A. 212].

Twenty-four witnesses preceded the petitioner [J. A. 200]. Some of the witnesses testified that petitioner was a Communist, active as such in the motion picture industry, and attacked his character, integrity, and reputation [J. A. 223-235]. Prominent employers in the motion picture industry, some of whom preceded petitioner on the witness stand and others of whom followed him, were directly asked by the Committee to discharge petitioner Lawson, and others, to establish a blacklist and to use the Motion Picture Producers Association of America as an instrumentality for the effectuation of that blacklist [J. A. 240-242; see also offers of proof referred to below, pp. 513-545].

As petitioner offered to prove [J. A. 212], his counsel renewed in writing their motion to the Committee to quash the Committee's subpoena [rejected Exhibit 6 for identification, J. A. 406] on October 27, 1947, and at the same time filed a written "Application to Compel the Return of Witnesses for the Purposes of Cross-Examination" [rejected Exhibit No. 7 for identification, J. A. 409].

By his renewed motion to quash, petitioner raised before the Committee constitutional objections that the subject matter of the investigation was outside the power of the Committee as an agency of government, that the investigation had the non-legislative object and aim of estab-

lishing and maintaining "a system of blacklists and to tell the motion picture industry whom to hire and whom to fire, without regard to the ability or talent of the employee involved and without regard to the choice of the particular employer" [rejected Defendant's Exhibit 6, J. A. 407] and had the non-legislative object and aim "to direct the motion picture industry to make only those films which the Committee feels reflect its ideas of the American way of life. This investigation is thus intended to deprive not only the motion picture industry of its free choice to select film subjects. More important, it will deprive the American people of the privilege of selecting such films as they may desire to see, solely upon the basis of quality, content and the public's unhampered choice." [Rejected Exhibit 6, J. A. 407.]

By his written application for the allowance of cross-examination of witnesses who had testified before the Committee against him, petitioner asserted and offered to prove to the Committee that these witnesses conspired with the Committee "to conduct this investigation for the purpose of controlling and censoring the motion picture industry and to deny persons engaged in the production of motion pictures the fundamental guarantees of freedom of speech, thus violating the Constitution of the United States and particularly the First Amendment thereof. An examination of the record of this investigation to date discloses that out of a total of 200,000 words of testimony submitted into evidence, 185,000 consisted of hearsay. When there is added to this shocking fact the accumulation of unsubstantiated accusation, slander and vilification, it becomes clear that the right of cross-examination is even more essential in this hearing than in a Congressional inquiry where minimum standards of decent procedure are observed." [Rejected Exhibit 7, J. A. 410.]

Both the motion and application were denied and petitioner Lawson then proceeded to testify.

At the outset of the petitioner's testimony before the Committee, he asked leave, and was denied the opportunity, to read a statement. The Chairman said, "The statement will not be read. I read the first line." [J. A. 188.]

The petitioner protested this refusal and called attention to the fact that executives of motion picture producing companies had been accorded the privilege of reading their statements.

Then the petitioner was asked and answered preliminary, identifying questions. The Committee next asked whether he was a member of the Screen Writers' Guild. The petitioner first objected to the question, urging that the Committee had no power to ask it. He was interrupted numerous times in the course of his reply before he was able to and did say that it was a matter of public record that he was a member of the Guild. The Committee interrogated him concerning his activities as a member and officer of the Screen Writers' Guild. The petitioner answered these questions, protesting them, asserting they violated his constitutional rights, and stating that the information sought was a matter of public record, and that he was a former President of the Guild. Similar questions concerning his screen writing were answered in the same way.

The petitioner was then asked: "Are you now or have you ever been a member of the Communist Party?" Again the petitioner replied by protesting, by saying that the question violated his rights and exceeded the powers of the Committee. He asked that witnesses who had testified concerning him be recalled for cross-examination

so that he could show they had perjured themselves. Members of the Committee and its counsel, Mr. Stripling, repeatedly interrupted the petitioner's reply. The testimony was brought to a close by the Chairman in the following manner:

> "The Chairman: Then you refuse to answer that question; is that correct?
>
> Mr. Lawson: I have told you that I will offer my beliefs, affiliations, and everything else to the American public, and they will know where I stand.
>
> The Chairman (pounding gavel): Excuse the witness . . .
>
> Mr. Lawson: As they do from what I have written.
>
> The Chairman (pounding gavel): Stand away from the stand . . .
>
> Mr. Lawson: I have written Americanism for many years, which you are trying to destroy.
>
> The Chairman: Officers, take this man away from the stand . . ." [J. A. 196-197.]

Petitioner offered and the Court refused to allow proof that when the Committee certified the alleged contempt to Congress it did not submit any part of Lawson's statement which he had offered to the Committee during the hearing, nor was it in any way presented to or considered by Congress before or during the debate on the citation for contempt. Similarly proof was offered and rejected that the defendant's various motions made before the Committee to quash the subpoenas and for the cross-examination of witnesses were not submitted to or considered by Congress either before or during the debate on the citation for contempt [J. A. 301-309].

With this preliminary statement of the Committee hearings and the certification to the House of Representatives as developed at the trial, we now turn to a consideration of the proceedings in the trial court.

Prior to the trial, petitioner filed a Motion to Dismiss the Indictment, which was denied [J. A. 5, 6, 11]. *At the trial,* the following was the only evidence offered by the Government to establish the existence of a competent tribunal at the time that the petitioner testified at the Committee hearings. The Committee had been created and its personnel of eight members designated by virtue of and pursuant to the Legislative Reorganization Act of 1946 [J. A. 174-175, Government's Exhibits 1, 2 and 3, J. A. 379-380]. On the morning of October 27, 1947, the session at which petitioner Lawson was called, three members of the Committee, Congressman Thomas, Chairman, of New Jersey, Congressman Vail of Illinois, and Congressman McDowell of Pennsylvania, were present. The Chairman opened the hearing on that day by saying: "The record will show that a sub-committee is present consisting of Mr. Vail, Mr. McDowell and Mr. Thomas." [J. A. 183.] Over petitioner's objections, the Chairman of the Committee testified that as a matter of law he, as chairman of the Committee, has authority to designate whether a full committee or a sub-committee shall sit, and in the latter event, to appoint the sub-committee; that he had appointed a sub-committee at the outset of the hearing on October 27, 1947, by making the statement in the record to the effect that a sub-committee consisting of himself, Mr. Vail and Mr. McDowell was present [J. A. 183-186, 197-198].

The petitioner served subpoenas *duces tecum* on the Committee calling, among other things, for the records

of the Committee relating to the appointment of or any authority given to appoint a sub-committee to sit in the hearings in Washington in October of 1947. The Government's motions to quash the subpoenas in their entirety were granted, despite petitioner's contention, among other things, that these records would show that the Committee was authorized to conduct the October, 1947, hearings only by and through the full committee [J. A. 318-28, 343-346].

Upon submission of the case to the jury, the judge instructed it that if the Chairman designated a sub-committee on October 27, 1947, the body so designated was a validly constituted sub-committee of the Committee, thereby deciding as a matter of law and without regard to the facts that the Chairman had authority to designate a sub-committee [J. A. 355]. The Court refused to give petitioner's proposed instructions, either that a quorum of the full Committee was necessary in order to constitute a legally competent tribunal, or that a sub-committee could act only if it had been designated by the full Committee or pursuant to its authorization [Petitioner's Proposed Instructions 37 to 48, inclusive, J. A. 372-375].

The trial judge held immaterial and refused to permit evidence in support of petitioner's contentions that the Committee used its powers as an agency of government to establish a blacklist against petitioner and others, to censor motion pictures and to conduct an unlimited investigation into the content of speech and ideas, designed to impede and resulting in the impediment of free speech and association. In support of his contentions the petitioner made a number of offers of proof, after Government objections to appropriate questions had been sustained. All of said offers were rejected. With respect

to blacklisting the petitioner offered to prove the following:

(a) A sub-committee of the Committee, with its chief investigator, Stripling, went to Los Angeles in the Spring of 1947 and there examined a number of motion picture producers, and called upon them to discharge and to suspend certain writers and directors whom the Committee considered to be Communists, among whom was the petitioner, Lawson.

(b) The producers at first rejected the demand of the sub-committee that certain writers be discharged and blacklisted and said that such conduct was unlawful [J. A. 545].

(c) In the Summer of 1947, the Committee sent two of its investigators, Leckie and Smith, to Hollywood, there to call upon the producers, including Louis B. Mayer, executive in charge of production at Metro-Goldwyn-Mayer Studios, and Dore Schary, executive in charge of production at RKO Radio Pictures. These investigators urged the producers "to clean out their houses of certain writers, including petitioner, else there would be trouble in the industry from the House Committee." [J. A. 312-316.]

(d) During the hearings at which petitioner testified all of the members of the Committee and the Committee's chief investigator urged the Motion Picture Producers Association and individual producers to establish a blacklist of persons, including the petitioner, whose alleged views and affiliations were disapproved by the Committee.[2]

---

[2]For example one Committee member stated that the industry should "concern itself with cleaning house in its own industry . . . I don't think you can improve the industry to any greater degree and in any better direction than through the elimination of the writers and the actors to whom definite Communistic leanings can

(e) In November, 1947, following the close of the Washington hearing, the industry capitulated to the Committee's demand for a blacklist; the petitioner and nine other writers and directors named by the Committee were blacklisted by the industry. Unexpired contracts of other so-called "unfriendly" witnesses were abruptly terminated and further employment in any branch of the industry was denied to all of them, including petitioner [J. A. 263 and 167 F. (2d) 241, 254, note 8].

(f) Thereafter, the Committee in its request for contempt citations claimed "the credit for these discharges and this blacklist."[3]

---

be traced." The Committee's counsel joined in the demand that "Communistic influences . . . and I say Communist influences; I am not saying Communists"; be eliminated from the industry by cutting "these people off the payroll" [J. A. 517]. One of the members of the Committee stated the function of the hearing in this way: ". . . of course, we have the problem of eliminating the Communist element from not only the Hollywood scene but also other scenes in America, and we have to have the full support and cooperation of the executives for each of those divisions" [J. A. 518]. At another point, the Chairman of the Committee stated that four of the unfriendly witnesses (the term used by the Committee in referring to petitioners Lawson, Dalton Trumbo, and other writers) before the Committee have been shown to have "extensive Communist and Communist-front records. Yet, this kind of people are writing scripts in the moving picture industry" [J. A. 521]. He then went on to state that that was one of the reasons for the investigation, and that the investigation will be beneficial to the American people and to the industry "because you are the people . . . you persons high up in the industry can do more to clean your own house than can anybody else, but you must have the will power, and we hope that by spotlighting these Communists you will acquire that will" [J. A. 522].

[3] [See Transcript. J. A. 263-4]; Congressional Record, Monday, November 24, 1947, at page 10890, *et seq.*:

> "Congressman Mundt: . . . Then to go on, I want to congratulate the Fox Moving Picture Co., the Twentieth Century-Fox, I believe it is called, which passed a resolution the other day, and I want to read it to you. 'Resolved, that the officers of this corporation be and they are hereby directed, to the extent that the same is lawful, to dispense with the services

With respect to censorship the petitioner offered and the Court refused to permit the following proof:

(a) The Committee utilized its hearings to stop the production of motion pictures, the over-all approach of which did not meet the approval of the Committee members. Included in this category were pictures like "Mission to Moscow," based upon the book of the same title written by former Ambassador Davies [J. A. 489-490] and pictures which depicted Negroes in a favorable light. One of the reasons why the petitioner was called as a witness by the Committee was that he wrote pictures which did so treat Negro characters [J. A. 325-326].

(b) The Committee utilized its hearings and the questions put to petitioner to compel the motion picture industry to make only the kind of pictures the Committee believed should be seen by the American public. Thus for example the chairman asked one witness whether he believed that these public hearings would "aid the industry in giving it the will to make these [anti-Communist] pictures," and the witness replied: "It is my opinion that they will." [J. A. 488.]

(c) The Committee utilized its hearings to establish standards for the content of motion pictures. It called on the motion picture industry to eliminate from pictures

---

of any employee who is an acknowledged Communist or of any employee who refuses to answer a question with respect thereto by any committee of the Congress of the United States and is cited for contempt by reason thereof.'

"I congratulate Twentieth Century-Fox on that progressive and patriotic step. I think it is time, and I think it is just a little late, that Hollywood take that action but I congratulate it now because it is highly important that Communists be purged out of the moving picture industry. This desirable objective has been materially aided by the recent hearings in Washington as the general public is becoming rapidly alert to the problem."

anything which the Committee considered Communistic or un-American or subversive propaganda. The Committee chairman and other Congressmen, members of the Committee, recognizing that "it would be very foolish for a Communist or a Communist sympathizer to attempt to write a script advocating the overthrow of the government by force or violence," found un-American propaganda in "innuendos and double meanings, and things like that" [J. A. 504], in "slanted lines" [J. A. 505], in "subversion" inserted in the motion pictures "under the proper circumstances, by a look, by an inflection, by a change in the voice." [J. A. 505.] Among the subversive manifestations in motion pictures specified by the Committee were reference to some crooked members of Congress, to dishonest bankers or Senators, to a minister shown as the tool of his richest parishioner, and to presentation of bankers as unsympathetic men [J. A. 506-510].

With respect to his contentions that the Committee used its hearings and powers to conduct an unlimited investigation into the content of speech and ideas designed to impede and resulting in the impediment of free speech and association, the petitioner offered and the Court refused to permit the following proof:

(a) During its entire existence the Committee has considered its authority sufficiently broad in scope to permit investigation and examination of every kind of organization, whether fraternal, social, political, economic, or otherwise, and of every kind of propaganda, including limitless and unrestricted inquiry into any and all ideas, opinions, beliefs, and associations, of any and all individuals and organizations. In determining whether the investigation into the Hollywood motion picture industry

should be made, hearings held, and questions put, the Committee interpreted and applied the resolution and rules under which it acted in accordance with said construction of its powers [J. A. 420; rejected Exhibit 9].

(b) The Committee conducted its Hollywood investigation, determined the pertinency of questions, and otherwise proceeded upon the basis that its authority was established by its own definition and application of the terms "un-American propaganda activity" and "subversive and un-American propaganda that . . . attacked the principles of the form of government as guaranteed by our Constitution." The Committee's concept of what is un-American and subversive runs the whole gamut of what are often denominated progressive ideas in American life, from support of the New Deal to opposition to the Committee on Un-American Activities; from opposition to monoply to defense of sit-down strikes; from advocacy of the Geyer Anti-Poll Tax Bill to opposition to the method of choosing members of the legislature in New Jersey; from supporting, during the war, friendship with "our allies, the Russian people" to the belief that the government of Franco-Spain is not democratic; from a belief in absolute racial and social equality to signing a resolution in opposition to outlawing of the Communist Party; from criticism of Congress to criticism of Chiang-Kai-Shek [rejected Exhibit 9 for identification; J. A. 420-479; 249-253].

(c) Upon the basis of the aforesaid premises as to what constitutes un-American, subversive activity, the Committee has built up files containing names of more than a million individuals and more than a thousand organizations accused of being subversive. It has asserted that it functions as "the Grand Jury of America," as a

"vigilante committee," and that it is a "democratic" substitute for the gestapo [rejected Exhibit 9 for Ident., J. A. 420-479].

(d) Representative Herman E. Eberharter as a member of Congress and a former member of the Committee thoroughly familiar with its activities would state on the basis of his expert knowledge that the Committee had not been engaged in obtaining information for any matter within the scope of any lawful legislative power but that it had engaged in attacking ideas with which it disagreed and which could not be considered subversive by any reasonable standard and that it was a conscious political instrumentality directed against the new deal [J. A. 307-309].

(e) The Hollywood hearings directly impeded the exercise of free speech and association. The effect of these hearings was recognized by a witness called by the Committee, who said he could not answer a question as to whether Communism was increasing or decreasing in Hollywood, because "It is very difficult to say right now, within these last few months, because it has become unpopular and a little risky to say too much. You notice the difference. People who were quite eager to express their thoughts before begin to clam up more than they used to." The effect of the Committee's action was also pointed out by Mr. Eric Johnston, of the Motion Picture Producers' Association, who stated that while Senator Robert Taft need not worry about being called a Communist, not every American was in that position. Charges of this kind can take away everything that a man has—"his livelihood, his reputation, and his personal dignity." [Exhibit 10 for Ident., J. A. 542.]

The petitioner contended that the procedures of the Committee were such as to deny him due process of law.

The trial court held that any evidence on this point was immaterial. The petitioner then offered to prove and the Court rejected proof that during the Hollywood hearings and at all other times the Committee while using its powers to accomplish the unconstitutional objectives set forth above including the destruction of individuals by blacklisting, character assassination and otherwise has consistently denied the basic rights of confrontation and cross-examination of witnesses, effective aid of counsel, the right to produce evidence, and that the Committee at all times has assumed "guilt by association" and unqualifiedly accepted hearsay upon hearsay and unsubstantiated gossip [rejected Exhibits 9 and 10 for Ident., *supra*].

The Government's evidence on pertinence was tried before the judge alone and not before the jury, over petitioner's objection, which was overruled [J. A. 220].

The only evidence to support the claim that the question put to petitioner was pertinent came from Congressman Thomas, who read from the Committee Transcript portions of the testimony given by three witnesses before the Committee during the investigation [J. A. 219-228]. These three witnesses, relied on to establish pertinence, were witnesses as to whom petitioner had in his "Application for Cross-Examination" [rejected Exhibit No. 7] —sought the right of cross-examination. Meaningful efforts to cross-examine Mr. Thomas on the issue of pertinence were disallowed, the Court saying:

> "The Court: Suppose they did not have any testimony. Suppose they decided to investigate the infiltration of Communists in the motion picture industry and they called Mr. Lawson as the first witness and asked him whether or not he was a Communist?
>
> Mr. Margolis: I take the position that they can't

call 140,000,000 Americans to the stand and ask them if they are members of the Communist Party.

The Court: I think I have had enough. I will rule. I will rule that the question is pertinent." [J. A. 242.]

The petitioner claimed that even by the Government's own test the inquiry into the motion picture industry was not pertinent to the subject-matter which the Committee by the terms of Section 121 of the Legislative Reorganization Act of 1946 was authorized to investigate and particularly that the writers' lack of control over the content of motion pictures rendered the questions put to petitioner not pertinent. In this connection the petitioner offered proof which the Court refused to permit that:

(a) There is nothing in American motion pictures generally or in the motion pictures written by petitioner specifically which by any reasonable standard or definition could be considered subversive or which would otherwise justify inquiry by the Committee [J. A. 270-280].[4] "Action on the North Atlantic," as one example of the pictures written by petitioner was classified by the organization as desirable for family or mature audiences and received a

---

[4]In addition to producers of long standing and high repute, heads of great studios including the largest studio in the world, prominent writers, story analysts, and drama critics, Richard Griffith, a reviewer, critic and executive director of the National Board of Review, was offered as a witness on this point. Mr. Griffith has reviewed many thousands of films as a critic and on behalf of his organization, whose purpose it is to organize audience support for meritorious pictures. Its seal is placed on approved films. The organization has two to three hundred community councils consisting of representatives of civic, religious, educational and cultural organizations. The governing body is composed of delegates from such organizations as the Boy Scouts of America, the American Bar Association, the Association of American Colleges, the National Association of Better Business Bureaus, the Daughters of the American Revolution, the Y.M.C.A., etc. [J. A. 266-70].

star as a picture especially worth seeing and as one which had done a great service for the American Merchant Marine [J. A. 272].[5]

(b) As a matter of undeviating practice in the motion picture industry it is impossible for any screen writer to put anything into a motion picture to which the executive producers object; the content of motion pictures is controlled exclusively by producers; every word, scene, situation, character, set, costume, as well as the narrative line and the social, political and religious significance of the story are carefully studied, checked, edited and filtered by executive producers and persons acting directly under their supervision; and consequently the content of every motion picture is determined by the producer; all of these facts were matters of common knowledge when petitioner Lawson was subpoenaed by the House Committee.

Petitioner further claimed that the question was not pertinent and was an invasion of his constitutional rights because the Committee did not ask the question in order to get information which it believed it needed. In this connection the Court rejected petitioner's offer of proof that every Congressman before whom Lawson testified on October 27, 1947, and a majority of the members of the whole Committee, and the Committee itself announced in their official statements that they were convinced before Lawson was put on the stand that he was a Communist and that nothing he could have said would change their minds, and that his disavowals would not be believed [J. A. 262-266; rejected Exhibit 11 for Ident., J. A. 546].

---

[5]An offer to exhibit each of the motion pictures which Lawson had written to the Court and to the jury was also rejected by the Court.

In addition to rejecting the offers of proof hereinabove referred to, the Court refused to permit or sharply curtailed cross-examination of the principal prosecution witness, Congressman J. Parnell Thomas, on the issues referred to above. Nor was the petitioner allowed to cross-examine the Congressman on the issue of his bias and prejudice as a prosecution witness against the petitioner [J. A. 202-203; J. A. 207; J. A. 214-244]. On the Government's motions the Court quashed *subpoenas duces tecum* directed to the Committee calling for its records relating to the aforesaid issues [J. A. 318-328; J. A. 343-346].

At the close of Government's case, petitioner made a motion for acquittal which was denied [J. A. 300.]

During the course of the argument of defense counsel to the jury, the Court interrupted the argument and stated to the jury that "there is nothing in the record to indicate that he was trying to answer the question. You can refer to the record" [J. A. 348-349], and charged the jury that (a) a non-responsive reply, or (b) a reply that seems unclear to the jury was *per se* conclusive proof of a refusal to answer and that such reply required the jury to return a verdict of guilty as against petitioner [J. A. 358, 359].

All of the petitioner's prayers and requested instructions to the jury were denied by the Court [J. A. 360].

Included in the instructions denied were some to the effect that a failure to answer or a non-responsive answer was not necessarily a refusal to answer [J. A. 377-378].

Prior to and at the outset of the trial, motions to transfer the cause to another district for trial on the ground that juries in the District of Columbia contain many Government employees and their relatives and that it was

impossible to have a fair trial in this particular cause wherein the principal prosecution agency was the House Committee on Un-American Activities, which Committee exercised meaningful control and authority over the jobs and the political views of the Government employees and their near relatives who might be called to sit upon such a jury; the motion to transfer to another district for trial was denied [J. A. 13-25, 57]. Prior to the final selection of the jury, petitioner moved to excuse for cause from the trial jury selected all those jurors who were government employees and government pensioners and their near relatives, and this motion was denied [J. A. 166]; as finally constituted, the trial jury in the case was composed of five persons employed by the Government, one juror who was receiving a pension from the Government, and one juror whose mother was receiving such a pension [J. A. 142, 143, 167]; the petitioner's request for additional peremptory challenges so that he might attempt to get non-government employees into the jury box was likewise denied [J. A. 166].

Immediately prior to the trial a challenge to the array and a motion to dismiss the jury panel was made on the ground that it was selected in a manner neither designed nor calculated to obtain a representative cross-section of the community. In support thereof, petitioner proved that one of the qualifications for jury service in the District of Columbia is an ~~affirmative~~ negative response to the question "Have you any views opposed to the American form of government?" [J. A. 87, 92.] In addition, the jury commissioner examined handwriting on questionnaires returned by talesmen for the alleged purpose of determining the intelligence of the prospective jurors; persons of low income groups with "poor handwriting" were disqualified on the

alleged ground that such poor handwriting disclosed a lack of intelligence in members of such groups. However, those in higher income brackets who likewise had "poor handwriting" were accepted for jury service [J. A. 97]. This motion also was denied [J. A. 29-32, 57-98].

Following the jury's verdict of guilty, petitioner made a motion for a new trial and in arrest of judgment, both of which motions were denied [J. A. 8].

Statement as to Jurisdiction.

The conviction was affirmed by judgment of Court of Appeals on June 13, 1949. The jurisdiction of this Court is based on the Act of June 25, 1948, c. 646 (62 Stats. 869), U. S. C., Title 28, sec. 1254, subsec. 1, which provides that a writ of certiorari may issue to the Court of Appeals of the District of Columbia "after rendition of judgment or decree."

Statutes Involved.

(1) Rev. Stats., Par. 102, as amended by Chap. 594, Act of June 22, 1938, 52 Stat. 942; U. S. C. A., Title 2, Par. 192:

> "Every person who having been summoned as a witness by the authority of either house of Congress to give testimony or to produce papers upon any matter under inquiry before either house or any joint committee established by a joint or concurrent resolution of the two houses of Congress, or any committee of either house of Congress, wilfully makes default, or who, having appeared, refuses to answer any questions pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1000.00 nor less than $100.00 and imprisonment in a common jail for not less than one month nor more than twelve months."

(2) Sec. 121(b), Legislative Reorganization Act of 1946, P. L. 601, Chap. 753, 79 Cong., 2d Sess., 60 Stat. 828, amends Rule XI(1)(2) of Rules of the House of Representatives to provide:

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of:

"(i) The extent, character, and objects of Un-American propaganda activities in the United States,

"(ii) the diffusion within the United States of subversive and Un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and

"(iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member."

(3) Title XI, Section 1417 of the Code for the District of Columbia, relating to qualifications for jurors, provides:

"No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful person, who has never been convicted of a felony or a misdemeanor involving moral turpitude."

(4) 49 Stats. at Large 682, Act of Congress of August 22, 1935, Chap. 605, provides:

"All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys of law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

"All other persons, otherwise qualified according to law whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of

the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided,* That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law."

Questions Presented.

I.

As a matter of law in a contempt proceeding such as this, is there a conclusive presumption which attends every Congressional investigation that such investigation is lawful, that the Committee had jurisdiction of the subject matter under inquiry, that the Committee acted within the lawful bounds of its power, and that it denied no Constitutional rights or privileges to the witnesses, as was all conclusively presumed by the trial and appellate courts below in the face of petitioner's attempt to prove the contrary in each respect?

II.

May a private individual, called as a witness by the Committee in an investigation into a private industry wherein he is employed, be compelled to disclose his political opinions and associations, particularly where the Com-

mittee's proceedings are used to impose loss of employment and other penalties upon him; or does such compulsion violate Article One, Section Nine, and the First, Fourth, Fifth, Ninth and Tenth Amendments to the Constitution?

III.

Does an investigation in which the Committee uses its powers to censor the content of motion pictures lay outside the lawful bounds of the Committee's power; and may a witness before the Committee be compelled to answer a question which is put as part of the process of censorship, or would such compulsion violate the First Amendment?

IV.

Does an investigation in which the Committee uses its powers to secure the discharge and blacklisting of persons whose alleged ideas and affiliations are deemed "un-American" and "subversive" by the Committee lay outside the lawful bounds of the Committee's power; and may a witness before the Committee be compelled to answer a question which is put as part of the process to secure his discharge and blacklisting, or would such compulsion be a usurpation of power and a violation of the due process clause of the Fifth Amendment?

V.

When a witness before the Committee is being threatened with discharge and blacklisting in and by the Committee's use of its power, is it a denial of due process under the Fifth Amendment to refuse to allow the witness the effective aid of counsel, the right to make a statement and offer evidence in his own behalf, the right to cross-examine witnesses who attack him, and other essentials of a fair hearing?

VI.

Is the statute establishing the House Committee on Un-American Activities, on its face and as construed and applied generally and in the present case by the Committee, unconstitutional as in contravention of the First, Fourth, Fifth, Ninth and Tenth Amendments and Article I, Section 9 of the Constitution?

VII.

Did the trial court, by its instructions, refusals to admit evidence and quashing of subpoenas *duces tecum,* commit prejudicial error in taking away from the jury the questions of fact relating to the issue of the existence of a lawfully constituted tribunal and, in effect, determining that issue as a matter of law?

VIII.

Did the trial court commit prejudicial error in instructing the jury that a failure to give a responsive answer or the giving of a reply which is unclear to the jury is *per se* conclusive proof of a refusal to answer, and in commenting to the jury that the petitioner was not trying to answer the question?

IX.

Did the trial court commit prejudicial error in sharply curtailing cross-examination of the only prosecution witness as to some issues and refusing to permit cross-examination at all as to others?

X.

Did the trial court commit prejudicial error by refusing to admit evidence that the Committee, in presenting to the House of Representatives the citation for contempt, did not inform it as to all of the material parts thereof?

XI.

Did the utilization, over the objection of petitioner, of government employees as jurors in this particular case, involving the House Committee on Un-American Activities as the governmental agency directly interested in the prosecution and based upon the charge that petitioner refused to disclose whether or not he was a member of the Communist Party constitutes prejudicial error?

XII.

May the Jury Commission of the District of Columbia validly impose as a requirement for jury service a negative answer to the question, "Do you have any views opposed to the American form of government?"; and did the trial court commit prejudicial error in denying petitioner's challenge and motion to dismiss the jury panel based on the aforesaid requirement?

XIII.

Was petitioner's right to an impartial jury drawn from a cross-section of the community abbrogated by the establishment of qualifications for jury service other than those required by statute and which limited the representative character of the jury; and did the denial of the challenge and motion to dismiss the jury panel based upon the aforesaid grounds constitute prejudicial error?

XIV.

Was petitioner denied a fair trial in violation of the Sixth Amendment by reason of the matters set forth in questions VII to XIII, inclusive.

Reasons for Granting the Writ.

The court below decided important questions of federal law which have not been, but should be, settled by this Court. It decided federal questions in a way in conflict with applicable decisions of this Court. The court below has so far departed from accepted and usual course of judicial proceedings, and so far sanctioned such a departure by the trial court herein as to call for an exercise of this Court's power of supervision.

This is the first of the ten now famous "Hollywood writers" contempt cases. The widely publicized hearings out of which these cases arose were held in Washington, D. C., from October 20-30, 1947, by the House Committee on Un-American Activities. Since then a great debate, international in scope, has arisen over the constitutional questions presented by this case.* These comments have been numerous and highly important.

---

*See 46 Mich. L. Rev. 521; 47 Mich. L. Rev. 191; 33 Cornell L. Q. 565; 17 Univ. of Cincinnati L. Rev. 264; 14 Univ. of Chicago L. Rev. 256; 61 Harvard L. Rev. 592 ("Loyalty Tests and Guilt by Association," John Lord O'Brien); 43 Ill. L. Rev. 253; 60 Harvard L. Rev. 1193 ("Report on a Report of the House Committee on Un-American Activities"), Walter Gellhorn; 47 Col. L. Rev. 416; 37 Georgetown L. Journal 104; 1 Baylor L. Rev. 212; 2 Rutgers Q. Law Rev. 125; 27 Neb. L. Rev. 608; 26 Texas L. Rev. 816; 15 Univ. of Chicago L. Rev. 544 ("Letter to President from Yale Law School Faculty"); 34 A. B. A. J. 15; 22 So. Cal. L. Rev. 464.

1. The instant case and its companion, *Trumbo v. United States,* are the first cases to reach this Court which squarely present the issue whether the House Committee on Un-American Activities has the power under our Constitution to summon before it individual Americans and require them to make compulsory disclosure to it of their political affiliations. The determination of this issue is essential, for not only has this agency of government claimed and exercised such power of compulsory disclosure, but the precedent set by the agency of government has sired a host of similar claims to like power throughout the length and breadth of the nation. In the wake of this assertion of official power, governmental agencies of every kind and character, local, state and federal, are presently asserting power, through various devices of compulsory disclosure, to require persons to render unto such bodies an accounting not only of their affiliation or non-affiliation with a given political party, but an accounting as well with respect to the newspapers, books and magazines they read, the causes, beliefs and ideas they embrace, the religion to which they adhere, and the associations into which they have entered whether transient or enduring.*

Standing alone this question presents constitutional problems of great importance the answer to which will have a great impact upon American life. Moreover the problem is so posed in this case that it presents a host of additional constitutional issues.

The court below recognized that the compulsory disclosure demanded by this agency of government invaded

---

*The consitutionality of such a broad assertion of power is presently before this court for review in the case of *Parker v. County of Los Angeles,* October Term 1949, No. 49.

the area of opinion, speech and association. However directly contrary to what this Court has held in numerous cases the court below based its opinion on the proposition that the opinion, speech and association fell within the area of governmental power because the ideas involved were extremely important and because the medium of communication—the Motion Picture Industry—was very influential. A statement of the law more directly opposite to the holdings of this Court would be difficult to formulate.

The court below justified its ruling on the premise that ideas themselves may, because of their content, constitute "danger" to the nation against which Congress may protect the people. It held that in probing for ways and means to afford protection against such "dangerous thoughts" Congress may require an individual to disclose his political associations. This concept in its entirety is utterly irreconcilable with the fundamental premise of democracy that the people, not government, shall hear and judge all creeds and ideas.

Moreover, the investigation here by an agency of government into the content of motion pictures and the disclosures of affiliations commanded by the Committee, as part of that investigation, were sustained by the court below without evidence whatever of any reasonable basis for belief by Congress that any given ideas were "dangerous" or that the motion picture industry was in any way furthering any ideas which might, by any reasonable standards, be supposed to be "dangerous." Indeed, the petitioner was denied the right to prove the total absence of any reasonable basis for any such beliefs. If no basis need be laid by government and if a person affected may not even affirmatively disprove the existence of basis,

there is, then, unlimited right on the part of this agency of government to inquire into political beliefs and associations.

No such power has ever before been claimed by any agency of our government. Such assertion of power presents fundamental constitutional issues which this Court should determine.

Furthermore, the Committee used this broad and fearsome power to censor the content of motion pictures and to purge from the motion picture industry alleged "disbelievers" in the "Americanism" to which the members of the Committee subscribed. In so doing it found "heresy" in everything which displeased its members, from alleged membership in the Communist Party to belief that some Congressmen are not altogether honest.

Within the motion picture industry, in the hearings here involved, the Committee as an agency of government used its powers to penalize individuals, including petitioner, because of their alleged beliefs and affiliations. The penalties imposed by such governmental action included blacklisting, character assassination and incitement of public retribution. All this, it did, without any law authorizing the imposition of a penalty, for past conduct and without any of the procedural safeguards which are required for a fair hearing.

But that is not all! The petitioner asked, and was denied the opportunity to establish that this agency of government consistently construed and applied its powers under Public Law 601 as giving it the authority, not alone in the motion picture industry but in every industry, to range the entire area of ideas and association and to ~~determine~~ obtain from every person whether he is or ever was "American" or "un-American." Petitioner was denied oppor-

tunity to show that this Committee repeatedly asserted that it was its function to drive all "un-Americans" out of every phase of American life. Whether or not the power claimed by this agency of government exists in law, this Court has never squarely determined. It now should.

2. In large part the fundamental issues referred to above were not passed upon by the courts below. They ruled and held that there is in a criminal case of this type, a conclusive and irrefutable presumption, which petitioner could offer no proof to overcome, that the investigating committee in fact and in law did have jurisdiction over the subject matter of the inquiry, did not act in excess of the lawful bounds of its power, and did not violate any fundamental rights of the witness; and in addition for all practical purposes the courts below treated the question of pertinence as established by matters of which the Court could take judicial notice without need of proof and without meaningful opportunity of counter-proof.

Contrariwise petitioner submits that it is the function and duty of the judiciary in such a criminal proceeding independently to review the assertion of governmental power by the investigating committee. The law is that a witness may rightfully refuse to answer, (a) where the Committee has no jurisdiction over the subject matter;[1] (b) where the subject matter is not proper for action by

---

[1]See *Kilbourne v. Thompson*, 103 U. S. 164; *Matter of Barnes*, 207 N. Y. 108; *Pacific Railroad Commission*, 32 Fed. 241; and *cf.* argument of Senator Bayard in support of the original adoption by Congress of the contempt statute (now 2 U. S. C. 192) set out in *Congressional Globe*, 34 Cong., 3rd Sess. 439, 440, Jan. 23, 1857.

the Committee;[2] (c) where the Committee has acted in excess of the lawful bounds of its power;[3] (d) where the question is not pertinent to some subject matter properly before the Committee;[4] and (e) where the Committee has asserted its power without due regard for the rights of the witness.[5]

While from the nature of the subject matter under investigation *prima facie* presumptions of legitimacy may sometimes arise, the presumption is never a conclusive one.[6] Moreover, no such presumption is permissible within the area embraced by the First Amendment.

Congressional investigating committees can and do assert power over individuals, which power may be effectuated by contempt proceedings utilizing the judicial processes. When the power of the Courts is so invoked, it is inconceivable to deny judicial review of the legislative power asserted. To do so not only refuses the individual

---

[2]*Marshall v. Gordon*, 243 U. S. 521; *Greenfield v. Russell*, 292 Ill. 392.

[3]See cases cited *supra; Jones v. S. E. C.*, 298 U. S. 1; *Interstate Commerce v. Brimson*, 154 U. S. 447; *Boyd v. United States*, 116 U. S. 616; *Harriman v. Interstate*, 211 U. S. 407; *Ex Parte Frankfeld*, 32 Fed. Supp. 915; *Hearst v. Black*, 87 F. 2d 68; see Frankfurter, "Hands Off the Investigators," 38 New Republic 329 (1924), and Dimock, "Congressional Investigating Committees," pp. 161, 162, 163.

[4]See cases cited *supra*.

[5]*Sinclair v. U. S.*, 279 U. S. 747; *McGrain v. Daugherty*, 273 U. S. 175, and cases cited [3] above.

[6]For instance, investigations so clearly within the realm of powers delegated by the people to the federal government as (a) investigations of the operations of executive branches of the government (*Sinclair* and *Daugherty* cases, *supra*); (b) investigations into the integrity of the members of the House of Congress (*Chapman's case*, 166 U. S. 661; *U. S. v. Norris*, 300 U. S. 564) and (c) investigations into the lobbying activities of corporations which dealt with or attempted to procure subsidies or other benefits from the federal treasury. *Hearst v. Black, supra.*

affirmative relief against unconstitutional acts by the legislature, but actually sanctions the imposition of punishment through the very judicial body which refuses to consider the constitutional rights of the accused. Judicial review of asserted usurpation or abuse of power by the legislature in committee investigations is no more a stripping of the congressional power to investigate than is the review of the constitutionality of statutes a stripping of congressional power to legislate. To deny such review in a criminal contempt proceeding is to establish as against the private individual that a Congressional investigating committee can do no wrong. Whether or not the judicial review presents delicate or difficult tasks the judiciary may not fail to act for such failure would be unconstitutional abdication of judicial power.

The suggestion that the only remedy for such asserted abuse of power is with the electorate and not the Courts is in vain. No man's constitutional liberties may be made to turn upon the outcome of any election. (*West Virginia v. Barnette,* 319 U. S. 624, 638.) Only this Court can undo the unconstitutional wrong visited upon petitioner.

3. In addition to the great issues of constitutional law involving the Committee's assertion and use of governmental power, this case presents a number of other issues, each of which, it is submitted, is sufficient grounds for the granting of this writ.

This case was decided by the court below before the decision of this Court in *Christoffel v. United States* (No. 528, Oct. Term 1948, decided June 20, 1949). The trial court herein in its instructions and rulings on matters relating to the existence of a legally constituted tribunal took away from the jury the questions of fact with respect thereto, committing error similar to, but more

aggravated than, that which was the sole basis for the reversal in the *Christoffel* case.

With respect to governmental employees on the jury, this case presents essentially the same questions of law which are involved in *United States v. Dennis,* certiorari granted June 27, 1949, No. 436.

This case presents for the first time for the consideration of this Court novel and ingenious devices whereby persons in the District of Columbia who do not accept as fixed and unchangeable in its entirety our present form of government and those in the lower economic categories are discriminated against in the selection of prospective jurors. In the past this Court has used its supervisory powers to prevent abuses of a far less flagrant character in the method of jury selection.

The trial judge in effect instructed the jury that a failure to give a responsive answer or the giving of an unclear answer, was a deliberate and intentional refusal to answer under the contempt statute. He refused to allow or sharply curtailed and cut off cross-examination on matters presented by the government and even on one question asked by the judge himself. He refused to permit the petitioner to prove that in connection with the securing of the citation for contempt against petitioner the Committee did not present all of the facts to Congress.

4. What is most important here, however, is that in the constitutional issues respecting the powers of the Committee "nothing less is involved than that which makes for an atmosphere of freedom as against a feeling of fear and repression for society as a whole. The dangers are not fanciful."[7]

---

[7]Frankfurter, J., dissenting, *Harris v. United States,* 331 U. S. 145, 173.

This Committee was, by its own solemn declaration, not seeking to get requisite information from the witness which it needed for any legitimate purpose; it was instead "getting" the witness. And with the blessings of the trial court and the appellate court below, it succeeded.

And so this Court need not, out of deference to the customary amenities, sensitively turn away from this sorry spectacle of congressional sinning. The cold record permits no such eye turning. Lawson was called here by this Committee, as it itself openly avows, to become the object of a gladitorial sport at which he would be given his "day in court, so to speak"[8] so that he could be blacklisted, impaled and destroyed in full view of floodlights, motion picture cameras, still cameras, radio recorders, representatives of the world's press, etc., etc. Where the Inquisition once had its rack, the Committee has what its Chairman grimly describes as a "day in court, so to speak." With the passage of the centuries we have thus changed our methods of torture. An advance in culture requires a refinement of methods—and this Committee unconstitutionally supplies it with a "day in court, so to speak."

---

[8]J. A. 546; defendants rejected Exhibit 11: "Chairman Thomas: During the second week we subpoened before us those who had been accused of being Communists or having engaged in Communist activities. They were subpoened because our investigation had disclosed that they were Communists or had long records of Communist affiliations and activities. * * * We also wanted these witnesses to have *their day in court, so to speak, to answer, if they could, the allegations which had been made against them.* * * * The reason these 10 individuals refused to answer the question was because they were Communists. They knew that we had the evidence that they were Communists, and they knew we were in a position to expose their Communist activities, which they had been engaged in over a period of years." (Emphasis supplied).

I.

The Committee's Utilization of Congressional Power, as an Agency of Government, to Compel Disclosure of Private Political Opinion and Association Is Forbidden: (a) by the First, Fourth and Fifth Amendments as Unwarranted Invasion Into the Private Rights of Individuals, and (b) by the Ninth and Tenth Amendments as Unwarranted Invasion Into the Area of Governmental Powers Reserved Exclusively to the Sovereign People.

It is petitioner's position that no power exists in Congress to compel a private citizen to answer, under compulsion of contempt, the question: "Are you now or have you ever been a member of the Communist Party?" This is so because of the confluence of principles hammered out by our history and conjoined as integral parts of the Bill of Rights.

A. The Committee's Utilization of Congressional Power, as an Agency of Government, to Compel Disclosure of Private Political Opinion and Association is Forbidden by the First, Fourth and Fifth Amendments as Unwarranted Invasion Into the Private Rights of Individuals.

When in the context of this investigation, the Committee sought to compel the petitioner to reveal his political beliefs and associations it was utilizing official power:

(1) contrary to the Fifth Amendment to revive the oath *ex officio;* and

(2) contrary to the First, Fourth and Fifth Amendments to carry on a forbidden search into belief and association.

(1) The Oath Ex Officio.

When the Committee sought to compel the petitioner to reveal his political beliefs and associations, it was attempting to revive the use of the oath *ex officio,* outlawed over 300 years. In this case the Committee has declared that Communism is political heresy. Like the Inquisition, this Committee effectuates its objective of stamping out "heresy" by the use of *ex officio* procedures.

The oath *ex officio* was originally conceived by the ecclesiastical authorities as an instrument to eradicate heresy. It was a method whereby the suspected heretic was put upon his oath and then compelled to answer questions touching upon his faith. Those who refused to answer were punished. The Inquisition[1] owed its effectiveness largely to the adoption of this method. (See Wigmore, 15 Harvard L. Rev. 615.)

Although, upon the Continent, the oath *ex officio* was received uncritically, its reception in England was much less favorable. In that island there already existed a deep-seated aversion to compulsory disclosures. In 890 A. D., Alfred the Great had hanged a justice of the peace "because he judged Olding to death for not answering." ("Mirrour of Justices," Horne (Washington 1903), Sec. 108 (p. 245), Subsec. 10 (p. 246).)

The Court of High Commission in Causes Ecclesiastical was set up in 1558 by Elizabeth, as head of the Church, and in 1583, under the leadership of Archbishop Whit-

[1]"The duty of the inquisitor, moreover, was distinguished from that of the ordinary judge by the fact that the task assigned to him was the impossible one of ascertaining the secret thoughts of the prisoner. * * * The crime he sought to suppress by punishment was purely a mental one." (Lea, "History of the Inquisition," p. 400, 405).

gift, the court started a crusade against heresy, effectuated by the examination of suspected persons under the oath *ex officio*. However, these efforts met the resistance of the common law lawyers led by Sir Edward Coke, who granted prohibition against the use of the *ex officio* process by the High Court of Ecclesiastical Causes, declaring:

> "And so long as a man doth not offend neither in act nor in word any law established, there is no reason that he should be examined upon his thought or cogitation; for it hath been said in the proverb, thought is free; * * *." (*Edward's* case, 13 Co. Rep. 9, 77 Eng. Rep. 1421.)[2]

In 1637 the Court of the Star Chamber examined John Lilburn, "Freeborn John," an opponent of the Stuarts, on a charge of printing or importing certain heretical and seditious books. Lilburn refused to answer questions. The Council of the Star Chamber condemned him to be whipped and pilloried for his "boldness in refusing to take a legal oath," without which many offenses might go "undiscovered and unpunished." (See 3 How. State Trials 1315, *et seq.*)

Lilburn was whipped, but the popular indignation that followed led to the downfall of the Court of the Star Chamber. In July, 1641, Parliament abolished the Court of the Star Chamber, the Court of High Commission for Ecclesiastical Causes, and provided by statute that no ecclesiastical court could thereafter administer an *ex officio* oath.

---

[2]See Maguire, "Attack of the Common Lawyers on the Oath Ex Officio," in Essays in History and Political Theory, Harvard (1936) p. 199.

The *ex officio* oath had been the most hated instrument employed to create the unhappy plight of the Puritans and Separatists. In 1637, Charles I had directed the High Commission that if these dissenters refused to take the oath they were to be "held and had as confessed and convicted legally." As R. Carter Pittman said in 21 Virginia Law Review 763, 771, "What more than this would be calculated to drive the Puritans and Separatists into either New England or insanity."

One of the grievances leading to the American Revolution was the Crown's extension to the colonies of the Vice-Admiralty jurisdiction together with its inquisitorial methods. The colonists "saw in the trials before prerogative judges without juries a threatened deprivation of all their rights as Englishmen among which was the right not to be dragged into an 'Inquisitional Court' for examination." (Pittman, *supra,* p. 787.)

While in England the oath *ex officio* was used to ferret out political and religious dissent, the hated procedure was applied to all crime on the Continent. The framers of the Bill of Rights feared that the new Federal Government might import into our system of law the inquisitorial procedures known to the civil law on the Continent.

The danger of direct self-incrimination, as we know it today, did not exist in 1787, because at that time and for nearly ninety years thereafter, the accused was not permitted to testify in his own trial even if he wanted to. (*Wilson v. U. S.*, 149 U. S. 60.) It was the inquisitorial method and the oath *ex officio* that Patrick Henry sought to prohibit when he urged the adoption of the Fifth Amendment. (III *Elliott's* Debates, pp. 445-449.)

This Court has said in respect to criminal cases:

> "Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent whereby an accused was interrogated in secret for hours on end." (*Watts v. Indiana*, No. 610, Oct. Term, 1948.)

Certainly the same prohibition against the inquisitorial method applies to those who are suspect of political dissent.

Since the demise of the oath *ex officio*, those who would compel the disclosure of beliefs and associations turned to the "test oath."[3] Since a refusal to answer under the test oath requirement did not mean imprisonment but only the deprivation of the right to vote or to follow a calling, it was claimed to be lawful.

But this specious argument[4] has never been adopted by American courts despite the many attempts to revive the test oath practice.

---

[3]Carl Joachim Fredrich "Teacher's Oaths" (1936) 172 *Harper's* 171.

[4]Following the decision in *Cummings v. Missouri*, 71 U. S. 277, see Argument of Charles C. Whittelsey, counsel, reported in the *Murphy and Glover Test Oath Cases* (1867) 41 Mo. 340 at 360; "Not one of the oaths prescribed by the English statutes, that I have read, required the citizen to swear that he had never committed a crime or expressed a sympathy with rebellion—not one required that the officer or the citizen should purge himself of offense, and bear testimony against himself. That is a discovery reserved for our times and our country and a great invention it is. 'Go to,' said the Quaker to poor Tray, 'I will not kill thee, but I will give thee a bad name,' as he turned him into the streets with the cry of 'mad dog.' and somebody else did kill Tray, and so do the provisions of this new Constitution say: We will not punish treason against the United States or this State, or any other offence mentioned in this long catalogue, but unless thou canst or wilt swear

But the danger has always lurked in the background (Reppy "The Specter of Attainder in New York, 23 St. John's Law Review 1-67, 243-290).

---

that thou has done none of these acts, we will deprive thee of thy means of living, and thy places of honor and profit held by thee of the gift of private individuals—thou shall not serve at the law, nor receive the profits of its profession—thou shall not minister at the altar of God, nor receive a salary from those worshipping thereat—thou shall not teach the young mind the truth, nor receive pay therefor—thou shall not direct the business of any private corporation, although its wealth be all thine own. We will not punish thee—we are merciful! But go—we proclaim thee an outlaw, disabled from following thy past calling—we forbid thee earth, fire and water, and commend thee to the charity of some other country in which we wish thee all success. * * * It is indeed an ingenious punishment; it dispenses with statutes defining offences and providing penalties therefore; it dispenses with courts, with all their paraphernalia of indictments by grand juries and trial by petit juries, executing the law upon offenders; all that is needed, is, that a law be passed every year or two requiring every citizen to swear that he has never wronged or defrauded any one; that he has never slandered his neighbor; that he has never committed murder, burglary, larceny, adultery or fornication; and if he cannot thus swear, then forbid him to follow any profession, trade or calling, for that will not be a punishment inflicted upon him, but a mere regulation of the trades, callings and professions in the State; and to provide such regulation, the State has a most perfect right; nay, more, it may prohibit them all to non-jurors, and still violate no provisions of the Constitution of the United States, nor take away any inalienable right of the citizen. * * * As the penalty does not reach to tangible property, nor actually touch the body, it is to be held no punishment, but a mere regulation of the business affairs of the people. Sirs! 'You take my life when you do take the means whereby I live.' *'Requiscat in pace'* was the parting benediction bestowed by the Inquisitors as they turned away from the brother whom they walled up alive in his death-cell. 'Go in peace' is the blessing bestowed upon those who may not swear by all the words of this new evangel of liberty."

Despite the Constitutional protection against inquisitorial procedures[5] there have been attempts, particularly in times of postwar hysteria, to impose penalties of various sorts upon individuals who refused to disclose their past opinions and beliefs. In 1803 the Pennsylvania Tories were the target (*Respublica v. Gill,* 3 Yates 429, discussed at 161 U. S. 633). Defeated partisans of the South retained their right to pursue their callings only by the action of this Court in *Cummings v. Missouri,* 71 U. S. 277. Contemporary discussion of this opinion had much of the intemperate quality of some expressions of our own times (Swisher, "Stephen J. Field, Craftsman of the Law," (Wash. 1930) p. 152), but the case became a landmark of American liberty.

The idea dies hard. Only last year District Judge J. Waties Waring in *Brown v. Baskin,* 78 Fed. Supp. 933, had to enjoin a test oath required of voters in the South Carolina Democratic Primary to "solemnly swear" that they believed in and would support "the social and educational separation of races" and that they were "opposed to the proposed Federal so-called FEPC law."

Since the road of the test oath has been so effectively blocked by this Court, the Committee here has reverted to the oath *ex officio* in order to compel the petitioner to reveal his political beliefs and associations. This Court

---

[5]"No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed. It cannot be denied, for example, that the religious *test oath* or the restrictions upon assembly then prevalent in England would have been regarded as measures which the Constitution prohibited the American Congress from passing." (Emphasis supplied). (*Bridges v. California* (1941), 314 U. S. 252 at 265).

must thwart *in limine* the revival of this mediaeval procedure.[6]

(2) The Right of the Individual to Be Let Alone With Respect to His Beliefs and Associations.

In every organized society in history, the individual has sought to establish for himself some areas of his life in which he had the right to say to his government, "So far and no further." The right, as against one's government, to be let alone is indeed a precious one.

In no organized society, however, is it possible for the individual to be completely free from governmental interference in his private life. It is possible, however, to establish areas in which the individual is entitled to a right of privacy—the right to be free from governmental meddling. Drawing upon the history of the 17th Century, the Bill of Rights was intended in part to delineate these areas.

The first ten amendments must be considered as an integrated design establishing the relation of the individual to his government in a free society. The very essence of this joint purpose is to protect the individual against the use of government power to invade "his indefeasible right of personal security, personal liberty and private property." (*Boyd v. U. S.*, 116 U. S. 616, 630.)

---

[6]In fact the committee's practices suggest a revival of another medieval procedure—the *peine forte et dure*—4 Blackstone 325-327. Compare: "Congressmen Mundt: Why did they refuse to answer? Because if they said 'No' the laws of perjury are too rough, and the sentences they would have received would be greater than if they simply maintained silence and were cited for contempt. If they admitted the truth and said, 'Yes,' then, of course, they knew they would lose the lucrative jobs they had been holding out in Hollywood." (J. A. 547).

This Court has read the Fourth and Fifth Amendments together so that the search permitted by the former may not be used to obtain the self-incriminating evidence prohibited by the latter. So, too, when the First, Fourth and Fifth Amendments are considered jointly, and particularly in their historical context, they spell out the right of the individual to be let alone with respect to his beliefs and associations. This right means that the individual may speak or keep silent as he chooses. The government may neither abridge his right to speak nor compel him to disclose the beliefs which he prefers to keep to himself.

The sanctity of a man's home, protected by the Fourth Amendment, is extended to the realm of his mind by the First Amendment. The First Amendment having carved out a domain belonging to the individual, upon which the government may not trespass, the concepts underlying the Fourth Amendment prohibit the government from exercising its powers of search therein. It matters not whether the search be by the rumaging of a man's papers or the conducting of an inquisition with respect to the contents of his mind not yet ~~been~~ put down on paper.

The Fifth Amendment reinforces this right to be let alone; for to compel a man to disclose his beliefs and affiliations, at a time when such disclosure may subject him to penalty of social sanctions, violates at least the principles and purposes underlying that Amendment.

Together, the First, Fourth and Fifth Amendments prohibit the government from prying into or otherwise interfering with the individual's beliefs and associations. And it is well that they do, for there can be no true freedom of belief and association unless the individual is allowed to choose his own time and place to disclose them.

As Mr. Justice Brandeis said, dissenting, in *Olmstead v. U. S.*, 277 U. S. 438, 478:

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Even if the investigation here involved matters not within the realm of the mind, it would hardly be contended that the power to inquire was an unlimited one. At the very least that power would be confined to necessity and would be subject to the requirement of reasonableness, as are search warrants and subpoena *duces tecum* under the Fourth Amendment.

The power of the legislature to investigate is based upon the legislature's need for information in order to enable it to act wisely and effectively in determining what legislation it should adopt. Such need arises only "where the legislative body does not itself possess the requisite information." (*McGrain v. Daugherty*, 273 U. S. 175; *People v. Barnes*, 204 N. Y. at 125; *Ex Parte Hague*, 150 Atl. 322; *People v. Webb*, 5 N. Y. Supp. 855.) Even where it inquires into matters not within the scope of the First Amendment, Congress may not demand information concerning the private affairs of a citizen, unless it is seeking and does not have information required in connection with the consideration of legislation or the need therefor.

Here the record demonstrates that this minimal test has not been met. For here every single Congressman before whom petitioner testified on October 27, 1947, as petitioner offered to prove, had publicly announced that it already possessed the very information sought to be elicited from the petitioner. Indeed, every single one of the Congressmen before whom petitioner testified on October 27, 1947, declared further:

1. That it would not believe any disavowal of Communist Party membership made by petitioner under oath; and

2. That it considered, for its purposes, that the very failure of petitioner to answer the question was proof of the fact of membership, already satisfactorily known to it.[7]

---

[7]Defendant's Rejected Exhibit No. 11. [J. A. 546, 547].

"1. Mr. Thomas (Cong. Rec. Nov. 24, 1947, page 10880): 'During the second week we subpoened before us those who had been accused of being Communists or having engaged in Communist activities. They were subpoened because our investigation had disclosed that they were Communists or had long records of Communist affiliations and activities. * * * *We also wanted these witnesses to have their day in court, so to speak, to answer if they could, the allegations which had been made against them.* * * * The reason these 10 individuals refused to answer the question was because they were Communists. *They knew that we had the evidence that they were Communists, and they knew we were in a position to expose their Communist activities, which they had been engaged in over a period of years.*

" 'After every one of these witnesses left the witness stand the committee staff immediately placed into the record their Communist Party registration card, along with complete reports of their extensive Communist activities.

" 'Before I proceed any further, I should like to make this point clear. These 10 individuals were not chosen at random and brought in and asked, as they would have you believe, "what is your political affiliations?" They were brought in, as I have previously stated, because of the overwhelming evidence which was before the committee that they were

Where, the Committee, as here, was not seeking information, the right of privacy protects a witness even against disclosure of any of his private papers or activities. When a government agency in addition asserted the power to delve into matters of opinion, it sought to turn back and destroy the pages of history in man's struggle for individual freedom.

The right to keep one's silence is ancient. It was known in Athens and Rome (*Coffin v. U. S.*, 156 U. S.

---

identified and active in a subversive and foreign-directed conspiracy which goes under the misnomer of the Communist Party of the United States.'

"2. Congressman Vail (Cong. Rec. Nov. 24, 1947, page 10881):

" 'All through their brazen performance it was also clear that the conduct of each of those 10 witnesses was in full accord with standard Communist practice long established to which all of them obediently conformed. In other words, these men showed a slavish subservience to the instructions of those representing a foreign power and utter and calculated defiance of a committee of the duly elected Congress of the United States. To indicate that the conduct of these witnesses was not the brilliant inspiration of any single individual witness or the result of a remarkable meeting of minds of all of them, I wish to cite the rules of conduct laid down for all Communists by their leading spokesmen.'

"3. Congressman McDowell (Cong. Rec. Nov. 24, 1947, page 10886):

" 'The ten witnesses who are all known to be veteran members of the Communist Party, which, the committee holds, as does most of you, to be not a political party, not a political ideology, nor a political philosophy, but an international political conspiracy, directed by an iron and militant hand in the capital of Soviet-Russia—Moscow.'

"4. Congressman Mundt (Cong. Rec. Nov. 24, 1947, p. 10891):

" '*Why did they refuse to answer? Because if they said "No," the laws of perjury are too rough, and the sentences they would have received would be greater than if they simply maintained silence and were cited for contempt. If they admitted the truth and said, "Yes," then, of course, they knew they would lose the lucrative jobs they had been holding out in Hollywood.*' " (Emphasis added).

432). It was relied upon by Jesus Christ in his trial (Matthew, 26:33).

General searches had originated in the Star Chamber (*Boyd v. U. S.,* 116 U. S. 616, 628) and they, along with compulsory self-accusation and inquisitorial investigations, "were among those intolerable abuses of the Star Chamber which brought that institution to an end at the hands of the Long Parliament in 1640." (*Jones v. S. E. C.,* 298 U. S. 1, 28.)

The inviolability of political opinion and its counterpart, political association, from Congressional search, was known and respected by Congress until the House Committee on Un-American Activities departed from this respected principle.

For example, in 1835, Thaddeus Stevens, then chairman of a committee of the Pennsylvania State Legislature to investigate the Masonic Order, issued subpoenas directed to prominent Masons, among them a minister, Rev. Dr. Sproal (Woodley, T. F., Thaddeus Stevens (Pennsylvania 1934)). Dr. Sproal, when called, refused to take the oath "on the grounds that it would wound his conscience as a Christian" and violate "his Constitutional rights as a man."

Stevens applied to the House to hold the witness for contempt. Although his party, together with the Whigs, enjoyed a majority in the House, the legislature refused and he was discharged (Woodley, *supra,* p. 29).

The following year Stevens was similarly rebuffed by William H. Harrison, later President, when he asked the latter's assistance in suppressing the Masons. Harrison replied that "he was certain that there exists no such power, either in the whole Government of the United

States or in any of its Departments, and that the attempt to exercise it would constitute a usurpation of power, pregnant, if tolerated by the people, with mischiefs infinitely more fatal than those which it was intended to remedy." (Woodley, *supra*, p. 38.)

On a number of occasions, the House of Representatives in contested election cases has had before it the problem of determining how a citizen voted. In these cases, of course, the issue was clearly presented: Has the legislature the power to compel a citizen to disclose his vote? Has it the power to compel him to disclose his political affiliation? The answer has been uniformly in the negative. From the numerous precedents, the following is one which enumerates in detail the reasons for the position uniformly taken by the House:

> "Where, as in New Jersey, the law allows of voting by ballot, thus intending to enable the elector to withhold the knowledge of his choice from all, *that law cannot so run counter to its own spirit as to compel him, on some other occasion, to unfold the secret.* Hence, the necessity of resorting to a grade of evidence, less direct, but which may be, and often is, no less certain than the oath of the voter. This position is supported by the decision in the election case from New Jersey, in this House, which was determined in 1840. In that case, the majority of the Committee on Elections * * * laid down the following rule as their guide. 'Although in numerous instances the voter, being examined as a witness, voluntarily disclosed the character of his vote, *yet in many cases he did not appear, or appearing chose to avail himself of his legal right to refuse an answer on that point.* In such cases, proof of general reputation as to the political character of the voter, and as to

the party to which he belonged at the time of the election, has been sufficiently demonstrative of the complexion of his vote." (Emphasis supplied.) (Representative Jenkins, *Congressional Globe*, 29th Cong., 1st Sess. 1845-46, App., p. 455.)

Recently there has been a growing awareness of this right. In Nutting, "Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs, 47 Michigan Law Review 181, at 221," it is said:

"Turning to the area of belief or opinion as distinct from action, it should be concluded that the former matters are privileged against compulsory disclosure. In many circumstances it may be desirable for a legislative body to determine who a man is and what he does or has done. But unless he translates his beliefs into action, what he thinks should not concern the government. 'The Devil himself knoweth not the mind of man' and Congress should not attempt to out-do his Satanic Majesty. It is impossible to demonstrate a relation substantial enough to prevail against the individual's desire for silence, between the public interest in disclosure and privately held views as to the form and function of government. For a court to allow the government to compel such disclosures would indeed amount to judicial approval of thought control."[8]

---

[8]"The essence of our political theory," writes Mr. E. B. White (New York Herald-Tribune, December 2, 1947) "in this country is that a man's conscience shall be a private, not a public affair, and that only his deeds and words shall be open to survey, to censure and punishment. The idea is a decent one, and it works. It is an idea that cannot safely be compromised with, lest it be utterly destroyed. It cannot be modified even under circumstances where, for security reasons, the temptation to modify it is great * * *. One need only watch totalitarians at work to see that once men gain power over other men's minds, that power is never used sparingly and

B. The Committee's Utilization of Congressional Power, as an Agency of Government to Compel Disclosure of Private Political Opinion and Association, Is Forbidden by the Ninth and Tenth Amendments as an Unwarranted Invasion Into the Area of Governmental Power Reserved Exclusively to the Sovereign People.

1. PETITIONER'S POSITION.

While the liberties of speech, thought and association[9] possess, of course, great value to the individual, the more fundamental constitutional significance attending those liberties is a societal one; they bear for the nation at large a value which is beyond all measure and which is derived directly from the function which they perform in the processes of a self-governing society. In our way of life the people play a role, and, indeed, the greatest role of

---

wisely, but lavishly and brutally and with unspeakable results. If I must declare today that I am not a Communist, tomorrow I shall have to testify that I am not a Unitarian. And the day after, that I have never belonged to a dahlia club. It is not a crime to believe anything at all in America."

[9]Affiliation, at least insofar as it is concerned with the holding and advocacy of doctrines, is but an inseparable corollary to a man's right to freedom of speech and thought. Assembly, association and affiliation, being but the means whereby in a complex society an individual today may render his right to freedom of speech and thought meaningful, are as fully protected by the Constitution as is speech itself. (*Thomas v. Collins*, 323 U. S. 516, 530; *De Jonge v. Oregon*, 299 U. S. 353; *Bowe v. Commonwealth*, 320 Mass. 230, 252; de Tocqueville, *Democracy in America*, (N. Y. 1946), Vol. I, p. 196; Laski, *Freedom of Association*, VI Encyc. Soc. Sci., p. 449).

The Communist Party being a political association, affiliation with that Party is in effect but an expression of the individual's right to think and speak freely in the political arena, and for those choosing so to do the right to affiliate with that Party or to espouse the ideas embodied in its program and platform is as immune from accounting to governmental authority as the right of other persons to affiliate with more popular causes or advocate more generally accepted views. (*Bridges v. Wixen*, 326 U. S. 135, *Schneiderman v. United States*, 320 U. S. 118). The view that ideas "Communis-

all, in their own government, and they do so through the liberties of the First Amendment.

The nation's Constitution was not ordained and established by the states, "but emphatically, as the preamble of the Constitution declares, by 'the people of the United States.'" (*Martin v. Hunter's Lessee,* 1 Wheat. 304, 324.) In adopting the Constitution, the people granted certain powers to the federal government and certain others to the state governments, but beyond doing this, they reserved to themselves "those sovereign authorities which they . . . [chose] . . . not to delegate to either." (*Martin v. Hunter's Lessee, supra,* p. 325.) So doing they made this nation "emphatically, and truly, a government of the people." (*McCulloch v. Maryland,* 4 Wheat. 316, 405. They made all government answerable in the ultimate to them for every deed undertaken and every policy established. (*Yick Wo v. Hopkins,* 118 U. S. 356, 370; *Newport Bridge Co. v. United States,* 105 U. S. 470, 482.)

At the very foundation of self-government by the people must be unfettered freedom of speech, thought and asso-

---

tic" in character are protected by the First Amendment (as affiliation therefore must be) was expressed by Mr. Justice Holmes in his now famous dissent in *Gitlow v. New York,* 268 U. S. 652, 673, when he said:

> " . . . if, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have they way."

Brandeis, J., similarly expressed himself in his concurring opinion in *Whitney v. California,* 274 U. S. 357, 379. The views expressed in these opinions have many times been adopted by majority decisions of this court. (*Bridges v. California,* 314 U. S. 252, 262-263; *Schneiderman v. United States,* 320 U. S. 118, 137; *Thomas v. Collins,* 323 U. S. 516, 537; see also *De Jonge v. Oregon,* 299 U. S. 353; *Herndon v. Lowry,* 301 U. S. 242; *Cantwell v. Connecticut,* 310 U. S. 296.

ciation within the area of matters of public moment. Free exercise by the people of these liberties is "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of . . . society." (*Thornhill v. Alabama,* 310 U. S. 88, 103.)

For the Committee here to assert authority to hold the people by and through compulsory disclosures accountable to it with respect to their thought, speech and associations fundamentally misapprehends the relation of people to their representatives in our nation. It is public officials who are accountable to the people for the ability and faithfulness with which they carry out the people's will, not the people who are accountable for their opinions, thoughts and desires to the holders of office.

It is, therefore, improper, as a matter of principle alone, for this Committee or any other governmental body to seek to compel, by compulsory disclosure or otherwise, submission to it of the thoughts, speech and associations of the people. (*Thomas v. Collins,* 323 U. S. 415, 539, *et seq.*)

Such submission could not be justified even though the burden placed on these freedoms were slight, for no restraint there can ever be deemed small when it is remembered what is restrained. (*Thomas v. Collins, supra,* p. 543; *Murdock v. Pennsylvania,* 319 U. S. 105, 108; *Jones v. Opelika,* 319 U. S. 103.) Even the possibility of injury to freedom of speech, thought or association is a risk with which the nation cannot gamble. This, because more important by far than the adoption of any single law or of policy, however imperative it may appear to be, is the preservation in full working order of the "processes of popular government" (*Thornhill v. Alabama,* 310 U. S. 88, 103), whereby the people may apprehend

and correct such errors of state as must inevitably occur. Freedom of speech, thought and association make up the operative machinery of those processes; all else in law and government is but the products which those processes create, recreate, alter, modify or abolish as the people will. Preserve the processes of self-government and the remedy exists to repair damage to end products, but impair the processes themselves and the entire cycle is stilled and democratic government is ended.

Even those justices who have disputed the outer reaches of the foregoing principles, have never questioned the narrower proposition that at least where burden in fact is imposed by government action the state action must be stricken down. (See dissenting opinions: *Murdock v. Pennsylvania,* 319 U. S. 105, 117, 118, 130, 134, 139. See also: *Grosjean v. American Press,* 297 U. S. 233; *Bridges v. California,* 314 U. S. 252, 268, 569.) And burden there is *in fact* in the instant case—burden most severe in manner and degree. Compulsory disclosure was used by the Committee here to expose and stigmatize the adherents of minority ideas and thus to invite—indeed, incite—ruthless economic, social and other retaliation against them. Such use of governmental power obliterates the ideas attacked and drives them and their adherents from the marketplace of thought.[10]

Even this does not exhaust the vice of the use of governmental power by this Committee to interfere with thought, speech and association. For here there is not merely interference attended by heavy burden but interference calculated and intended to *coerce* the people in their choice of

---

[10]This in the teeth of this court's command that "no State, nor all together, nor the nation itself" can "impede" freedom of speech and association. *Thomas v. Collins,* 323 U. S. 516, 543.

ideas and their speech and association in furtherance thereof. The Committee's demand for compulsory disclosure places no general or random burden upon speech and thought, retarding the discussion and evaluation of all ideas equally and alike but rather a *selective* burden falling only upon some ideas and calculated to intimidate the people with respect to those ideas. The Committee's action was thus calculated to coerce the people to speak and think, not according to their honest individual judgment and conscience, but according to their judgment and conscience as modified by fear. This is the final subversion of self-government. Coerced people no more rule themselves than do people in overt bondage. The framers of our Constitution "set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority." (*West Virginia v. Barnette,* 319 U. S. 624, 641.)

2. The Opinion Below.

In upholding the compulsory disclosures required by the Committee in the instant case, the Court of Appeals fully perceived that the central issue was the intrusion of government into the area of thought, speech and association. It sustained this intrusion on the ground that the thought, speech and association so burdened and abridged were important:

> ". . . No one can doubt in these chaotic times that the destiny of all nations hangs in balance in the current *ideological* struggle between communistic-thinking and democratic-thinking peoples of the world. Neither Congress nor any court is required

> to disregard the impact of world events, however impartially or dispassionately they view them. It is equally beyond dispute that the motion picture industry plays a critically prominent role in the *molding of public opinion* and that motion pictures are, or are capable of being, *a potent medium of propaganda dissemination which may influence the minds* of millions of American people. This being so, it is absurd to argue, as these appellants do, that questions asked men who, by their authorship of the scripts, vitally influence the ultimate production of motion pictures seen by millions, which questions require disclosure of whether or not they are or ever have been Communists, are not pertinent questions." (Emphasis added.) *(Lawson v. U. S.*—No. 9871 U. S. C. A.—D. C.)

This is complete approval, by the court below, of governmental preemption of the marketplace of public opinion. Petitioner's freedom of thought, speech and association, the lower court says, may be abridged—indeed, destroyed—because motion pictures are a potent medium for the dissemination of ideas reaching and influencing "the minds of millions of American people" and because the questions propounded by the Committee respecting Communist Party affiliation were "pertinent" to an "ideological struggle" so grave in importance and significance that "the destiny of all nations hangs in balance." Thus, the opinion holds, speech may be abridged whenever it relates to a vital subject matter or is expressed through an effective means of communication. The amendment is to be preserved only for unimportant speech ineffectively communicated.

This court's statement quoted below from *Bridges v. California,* 314 U. S. 252, 269, was written for this very case:

> ". . . It is therefore the controversies that command most interest that the decisions below would remove from the arena of public discussion.
>
> "No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression."

The court below openly expresses fear lest the people be induced—not by force, fear and compulsion, but through the free competition of ideas in what it, itself, designates as an "ideological struggle"—to favor one set of doctrines over another. Thus does that court abandon the root premise of democracy—faith in the judgment of the people as to the worth of all ideas whatever. Now an *idea* in and of itself becomes a *danger* demanding state suppression.

Under our Constitution no mere idea can be a danger. The "present danger" test has never referred to the "danger" of an idea. It has meant danger of *conduct,* of "substantive evil" against which Congress has a right to protect the nation. Congress has no right to protect the nation from an idea.

> ". . . it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine." *(Thomas v. Collins,* 323 U. S. 516, 545, Jackson, J., concurring.)

Additionally, laying the First Amendment entirely aside, the court below has upheld compulsory disclosure in the instant case upon a record which could not justify com-

pulsory disclosure even respecting personal affairs having nothing to do with freedom of speech, thought and association. Whatever the subject matter, Congress possesses no "general power of making inquiry into the private affairs of the citizen." *(Kilbourne v. Thompson,* 103 U. S. 168, 190.) Congress may not rummage at random through the papers, records or affairs of any person, firm or corporation merely "in the hope that something will turn up." *(F. T. C. v. American Tobacco Co.,* 264 U. S. 298, 306, quoted with approval in *Sinclair v. United States,* 279 U. S. 263, 294.) All persons as to all affairs have "the right to be exempt from . . . unauthorized, arbitrary or unreasonable inquiries and disclosures." *(Sinclair v. United States,* 279 U. S. 263, 292.)

Hence, even were the First Amendment not involved in the instant case, before Congress might investigate the personal affairs of petitioner, or any other member of the motion picture industry, respecting his or their participation in the production of pictures, reasonable basis and foundation for such investigation would first have to be established. The Frst Amendment aside, before Congress in the name of exploring the propagation of "dangerous ideas" could investigate any communication industry and, as part of such investigation compel any or all of the persons engaged therein to disclose their thoughts or affiliations, there would initially have to be shown some reasonable basis therefor. Here that means a reasonable basis for believing, first, that the ideas with which the investigation was concerned were "dangerous," and,

second, that the industry involved was in some manner furthering the propagation of such "dangerous ideas."

No such foundation existed in the instant case. In the first place there is no evidence in the record establishing the "danger" of any idea, however "danger" be defined. To the extent that the court below discovered any material supposedly bearing on the issue, it was not material extracted from any part of the record here, but consisted solely of matter judicially noted by another division of the court below in *Barsky v. United States,* 167 F. 2d 241, 247. The material related to the supposed "danger" of the precepts and program of the Communist Party in the United States and throughout the world. Yet this court has definitely held that judicial notice is unavailing to establish what ideas and precepts are in fact embraced by any political party—including particularly, the Communist Party of the United States, or any officer, member or supporter of that party—let alone to establish the "danger" of whatever ideas might in fact be so embraced. (*Schneiderman v. U. S.,* 320 U. S. 118; *Bridges v. Wixon,* 326 U. S. 135.)

Second, even could judicial notice supply proof that certain specific ideas, however expressed or defined, were in fact invested with "danger," still here, there is a lack of reasonable basis for the investigation undertaken of the motion picture industry. This because the pictures created by the motion picture industry are not matters kept secret and clandestine, but are an open book; and petitioner affirmatively offered to prove at his trial that

in fact, and as a matter of common knowledge, no picture produced by the motion picture industry had ever furthered in any measure or manner any "dangerous idea" under any conceivable, reasonable standards, defining such; and more petitioner offered to prove that, even were he so inclined, he, as a writer of film scripts, was utterly without power or discretion under the practices of the industry to intrude into any picture support of any such idea.

Thus, in the instant case, the Committee has invaded the area of speech, thought and association in so unreasonable and roughshod a manner that even were the First Amendment no longer a part of the Constitution, the Committee's action would yet offend individual rights. And more important by far, so long as this court stands, the First Amendment retains life not only as a part of the Constitution but as the core and heart of free society in America. As has been shown, the Committee and the court below have so misconceived freedom of speech, thought and association as to formulate and act upon the proposition that mere ideas may constitute dangers from which government rightfully may protect the nation. This proposition in its entirety must be stricken down. It is at war with liberty.

II.

This Particular Inquiry Into the Hollywood Motion Picture Industry Lay Entirely Outside the Lawful Bounds of the Power of the House Committee Because It Constituted a Censorship of the Content of Motion Pictures and Thereby Violated the First Amendment.

Motion pictures enjoy the same protection under the First Amendment as the press and radio. Congress could not legislate a direct censorship of the *contents* of motion pictures. (*U. S. v. Paramount,* 334 U. S. 131, 166.)

The motion picture belongs in the category of the free arts; it is, in a sense, a composite form in which the arts of drama, painting, the plastic and graphic, as well as the visual and literary arts find expression.

"What is good literature, or has educational value, what is good art, varies with individuals as it does from one generation to another," but despite these wide variances, "under our system there is an accommodation for the widest variety of tastes and ideas," because the "requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system." (*Hannegan v. Esquire,* 327 U. S. 146, 157-158.)

Motion pictures, like the play and the novel, offer us a medium for determining the truth of our existing concepts. They can point, on occasion, to the desirability of retaining the *status quo;* on other occasions, to the wisdom of social change. These expressions are desirable and should be unhampered by any governmental action if our way of life is to endure. Any censorship of the screen deprives Americans of their right of a free discussion of ideas and

concepts in the cultural field. The artist, the writer is just as much entitled to freely express his beliefs as the people are to receive them. To exercise censorship and restrict free communication of thoughts and beliefs from the artists to the audience is to "impoverish the intellectual life of the community." (Chafee, Free Speech, p. 529.)

Had the Committee used its asserted statutory power to investigate the content of American newspapers and had it demanded of a group of newspaper publishers that they abandon a particular editorial point of view and that they discharge and blacklist a group of editorial writers all associated with that point of view, the censorship in action would be crystal clear.

As applied to the motion picture industry the vice is the same.

The struggle for freedom from censorship, while centering around the press, was not limited to it. "The evils to be prevented were not the censorship of the press merely, but *any action* of the government by means of which it *might* prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." (2 Cooley, Const. Limitations, 8th Ed., p. 886, quoted in *Grosjean's* case (297 U. S. 233).)

Both before and since its application by the Athenians to Socrates, censorship has been defined as "the policy of restricting the public expression of ideas, opinions, concepts, and impulses which have or are believed to have the capacity to undermine the governing authority or social order which that authority considers itself bound to protect." (See Laswell, "Censorship," in Vol. 3, Enc. Soc. Sciences, p. 290.)

It was precisely this policy of restricting the public expression of ideas, opinions, concepts and impulses which was carried on here by this Committee, and it is precisely that policy of restriction which this Court has found to be "so abhorrent to our tradition that any use of it by any government agency should be stricken down." (*Hannegan v. Esquire, supra.*)

The argument that Congressional investigation is not censure or regulation is wide of the mark. The point is that such an investigation may in design and in fact be censure and regulation; petitioner here offered to prove that this particular investigation was precisely that, but the Court considered the proof immaterial.

Ordinarily, tax laws are not considered measures of censorship. But they may be—(*Jones v. Opelika,* 319 U. S. 103; *Murdock v. Pennsylvania,* 319 U. S. 105), and where shown to be such by the private citizen involved, they are judicially declared void. (*Grosjean's* case, *infra,* and cases cited.) This is so because "the Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name." (*Cummings v. Missouri,* 4 Wall. 277, 325.)

In *Grosjean v. American Press,* 297 U. S. 233, the censorship was achieved indirectly by a circulation tax against Huey Long's newspaper adversaries; the tax measure was stricken as a patent device to affect the censorship of a newspaper by circuity; in *Hannegan's* case, *supra,* the proscribed censorship was likewise achieved by indirection through the process of an administrative order denying the second class mailing privilege to a magazine whose content displeased the literary tastes of the Post Master General; the roundabout method still led to the stone wall against censorship.

And in this particular case, the censorship was achieved in two ways:

1. By the utilization of the governmental power of a Congressional investigation committee to strike *directly* at the content of films by, first, directing the industry to make certain kinds of pictures;[1] by, second, directing the industry not to make certain kinds of pictures;[2] by third,

---

[1]See Defendant's Rejected Exhibit 10; the following few examples are typical of the many there set forth:

"The Chairman: Well, has the industry the will to make anti-Communist pictures?

Mr. McGinnis: I think the industry is acquiring it.

* * * * * * * * * *

The Chairman: Mr. McGinnis, will these public hearings aid the industry in giving it the will to make these pictures?

Mr. McGinnis: It is my opinion that they will." [J. A. 487-488.]

* * * * * * * * * *

"Mr. Nixon: Under those circumstances I would like to know whether or not Warner Bros. has made or is making at the present time, any pictures pointing out the methods and evils of totalitarian Communism as you so effectively have pointed out the evils of the totalitarian Nazis.

Mr. Warner: We are preparing and will make one film, 'Up Until Now.'

Mr. Nixon: Under these circumstances, I think this Committee is glad to hear that Warner Bros. is contemplating for the first time now making a motion picture in which they point out to the American people the dangers of totalitarian Communism as well as Fascism." [J. A. 486.]

[2]The industry was repeatedly attacked publicly and criticized publicly by the Committee for having made the picture, "Mission to Moscow" [J. A. 489-490]; for having made the picture, "Song of Russia." [J. A. 490; cf. particularly J. A. 491.]:

"Mr. Stripling: Now, Mr. Mayer, you stated that you recently viewed the picture (Song of Russia)?

Mr. Mayer: Yes, sir.

Mr. Stripling: Is it your opinion that there were no political implications in it whatsoever?

Mr. Mayer: I am convinced of that. I am under oath and if I met my God I would still repeat the same thing";

for having made the picture, "North Star" [J. A. 494]; for having purchased the story, "Rachel" for motion pictures [J. A. 504]; for having made the picture, "None But the Lonely Heart" [J. A. 510].

suggesting standards and norms for the elimination of "slanted lines" and verboten scenes;[3] and,

---

[3]The particular content of the films was publicly and repeatedly censured for possessing "slanted lines," for allusions to bankers as "heavys," to Congressmen as "crooks," and to the Russians as "somber and moody people" whose children, however, are depicted as "smiling, happy children," and for the utilization of a gesture or the lifting of an eyebrow to convey a "subversive" impression. *Cf.* Exhibit 10 and the following exemplars:

"The Chairman: Don't you think it would be very foolish for a Communist or a Communist sympathizer to attempt to write a script advocating the overthrow of the Government by force or violence?

Mr. Warner: It would not only be foolish, it would be something they could not get away with in the American motion picture industry in California, or anywhere else.

The Chairman: Exactly. So what would they do. They would put in slanted lines wherever they could, and that is what you have been trying to keep out?

Mr. Warner: That is correct.

The Chairman: That is why you have been doing exactly the same thing in your business that we have been attempting to do in ours.

Mr. Warner: That is correct." [J. A. 505.]

* * * * * * * * * *

"Mr. Stripling: Can you tell the Committee whether or not in the past there have been efforts to discredit certain institutions of the American Government by constantly referring to the members of Congress as being crooks and so forth in the pictures?" [J. A. 506.]

* * * * * * * * * *

"Mr. Stripling: As a director, Mr. McCarey, what do you think the dangers are of permitting pictures to be made in which the institutions in this country are portrayed in a disparaging light? In other words, if pictures are made which always have the banker as a heavy as it has been referred to in the testimony, and that picture is shown in foreign countries, and so on, what do you think the ultimate effect would be?

Mr. McCarey: Well, naturally it would give a very unfavorable opinion of people who are successful in the United States.

Mr. Stripling: Do you think that is a dangerous practice for the moving pictures to pursue?

Mr. McCarey: I think it is a very dangerous practice." [J. A. 510.]

2. By the utilization of the governmental power of congressional investigating committee to strike *indirectly* at the content of films by blacklisting the men who create films, thus keeping their ideas off the screen.

As the history of totalitarianism clearly reveals, there can be no more effective censorship of any media of communication than a purge of the individuals identified, accurately or inaccurately, with the ideas and points of view which the censors want to expurgate. In the conquest of ideas, the taking of ten hostages can approximate in effect the direct suppression of ideas and points of view. This is precisely what Mr. Stripling had in mind (and realized) when he asked an employer spokesman for an industry, "Don't you think the most effective way of removing those Communist influences—and I say Communist influences; I am not saying Communists; I am not accusing them all of being Communists but don't you think the best way is the payroll route?" [J. A. 517; Rejected Defendant's Exhibit 10.] Seldom, if ever, has there been a more explicit statement of the censor's strategy of terror.

Not only were ten men and their ideas taken as hostages, but all those who remained in the industry together with their creative ideas stood in like jeopardy. This situation illumines the wisdom of the rule: 'It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom. (*Near v. Minnesota,* 283 U. S. 697; *Thornhill v. Alabama,* 310 U. S. 97.)

Nor can it be said that the investigators here were not imposing a censorship but were merely investigating to determine whether "some clear and present danger" or some "potential" threat thereof did in fact exist justifying some governmental concern and the resultant investigation into the Hollywood motion picture industry. In the first place, the investigation on its face reveals that this was no inquiry to determine the existence of any such clear or present or potential danger. Not only was the absence of any such danger apparent even to the Committee (which conceded as much before petitioner was called to the stand) but all of the investigators concurred in asserting the complete absence of any possible showing of such danger.

> (*Cf.* "The Chairman: Don't you think it would be very foolish for a Communist or a Communist sympathizer to attempt to write a script advocating the overthrow of the Government by force and violence?"
>
> * * * * * * * * *
>
> "The Chairman: Exactly. So what would they do? They would put in slanted lines wherever they could and that is what you have been trying to keep out?") [*Cf.* Defendant's Rejected 10.]

No person can seriously suggest that from "slanted lines" which do not advocate overthrow of Government by force and violence, can there conceivably come to our country any substantive evil of such "extreme seriousness" possessing such a "high degree of imminent danger," as

would be necessary to justify governmental intercession in the area of speech and opinion. (*Cf. Bridges v. California,* 314 U. S. 252.)

Not only is this patent, but over and above all this stands the fact that petitioner himself offered to assume the burden of showing first to the Committee and later to the Court, the absence of any such dangers, whether clear or present or real or potential or fancied. Deeming all such proof immaterial, both the Committee and the Court refused to allow it. [Rejected Defendant's Exhibits 4, 5, 6; J. A. 394-409; Rejected Defendant's Exhibit 10; and see J. A. 335 and 336.] Thus did the Trial and Appellate Courts reverse the firmly established doctrine of this Court that an individual whose freedom of speech or expression is threatened by any governmental action may show the action to be excessive because no clear or present danger existed justifying the same, or because no reasonably represented potential threat thereof was shown, even assuming the test of the *Barsky* case, *infra.*

The Trial and Appellate Courts placed the judicial seal of approval upon this particular governmental usage of power to effectuate censorship. It should be stricken down.

III.

The Committee as an Agency of Government Used Its Powers Under Section 121 of Legislative Reorganization Act of 1946 to Impose a Blacklist Against the Petitioner and Other Named Individuals, and Thereby Placed Itself Above the Constitution and Disregarded the Elementary Requirements of Due Process of Law in That: (1) It Usurped the Power to Legislate Confided by the Constitution to the Concurrent Action of Both Houses of Congress and the President; (2) It Exercised Such Power in a Manner Prohibited Even to the Entire Legislature; (3) It Invaded the Area Delegated Exclusively to the Judiciary; and (4) It Exercised Such Judicial Power in a Manner Prohibited Even to the Judiciary.

On the grounds of "immateriality," the trial court refused to allow proof that the Committee used its processes as a governmental agency, including the hearing to which petitioner was subpoenaed, to initiate and effectuate a *purge*, through the establishment of a blacklist in the motion picture industry, of a group of named writers, directors and producers, including petitioner.[1]

The proof offered and refused was that the Committee, acting alone and without authorization of any law what-

---

[1]Also, instructions proposed by the petitioner, dealing with this point were rejected. See, for example, petitioner's proposed instruction No. 25.

> "The jury are instructed that if they find upon all the evidence that the sole and primary purpose of the investigation of the defendant, John Howard Lawson, was to cause him to be discharged from employment in the motion picture industry, and to be blacklisted therefrom, then such investigation would not be a lawful 'question under inquiry' within the meaning of the statute, and the jury should find the defendant not guilty" [J. A. 369-70].

ever, had established certain standards of permissible and impermissible thought, speech and association;[2] that of its own prerogative the Committee determined that persons offending against those standards of thought, speech and association for such transgressions be deprived of and forever barred from employment as writers, producers or directors in the motion picture industry; that it, as part of a national program aimed at every part of American life and industry, had *used its hearings to initiate and effectuate a blacklisting* by all employers within the industry aimed generally at all persons violating said standards[3] and specifically at certain named individuals, including petitioner,[4] found by the Committee to have violated said standards.

So far from being immaterial, such conduct by the Committee marks usurpation of power and disregard of the doctrine of separation of powers and the arbitrary use of that assumed authority to destroy individual rights in a manner offensive to a host of constitutional principles

---

[2]Simply stated, these standards condemned and proscribed all speech or thought with which the Committee chanced to disagree. Proscribed and outlawed under these standards as "communistic," "subversive" and "un-American" speech and thought were such ideas, among others, as advocacy of "absolute social and racial equality" [J. A. 461], recommending dissolution of the British Empire [J. A. 454], favoring a "planned economy" [J. A. 438] and questioning the divine origin of the rights of man [J. A. 461].

[3]Thus, for example, ex-Congressman Vail, then a member of the Committee, said during the course of the hearings: ". . . but, of course, we have the problem of eliminating the communist element from not only the Hollywood scene but also other scenes in America, and we have to have the full support and cooperation of the executives from each of those divisions." [Committee Hearings, p. 66, J. A. 518]. All of the members of the Committee agreed with the above statement and cooperated in using the Committees' power to achieve the desired results [Ex. 10 for Ident., J. A. 481, 513-18].

[4][J. A. 481.]

and completely inconsistent with the elementaries of due process of law.[5] In short, the Committee converted itself into a "purge agency," thus assuming powers completely foreign to and forbidden by our constitutional system.

The essential concept of the Fifth Amendment is that no agency of the federal government shall deprive any person of life, liberty or property save by and through the regularly established and recognized processes of law.[6] This requires first the existence of a law applicable to the situation concerned, a law duly and regularly enacted by the legislative organs established by the Constitution, the House of Representatives and the Senate, and approved by the President. The law so created and established must be free from substantive objection under the Constitution. Thus, it may not be a law imposing penalty upon past conduct, for such would be *ex post facto* legislation prohibited by Article I, Section 9, Clause 3 of the Constitution. Nor may it impose penalties upon named persons or

---

[5]Man has never achieved a device better designed to destroy an individual, to deprive him of his liberty, his property and his dignity as a person, than a blacklist closing to him his chosen profession to which he has devoted a lifetime and from which he has secured a livelihood (*Cummings v. Missouri*, 4 Wall. 277; *United States v. Lovett*, 328 U. S. 303.

[6]That the deprivation of liberty and property (employment, reputation and career) was achieved by the Committee in the instant case by indirect and subtle use of governmental power rather than by formal criminal legislation imposing fine or imprisonment renders it more rather than less obnoxious. The command of the Constitution is that no governmental body shall "*deprive*" any man of liberty, property, or life without respecting and observing the limitations imposed by the Constitution. It matters not how government achieves the forbidden end. Whether by statute or by any other method or contrivance whatever, direct or indirect, no governmental agency has the right, authority or lawful power to deprive any person of liberty, property or life save through action consistent in all respects with the provisions of the Constitution. (*United States v. Classic*, 313 U. S. 299; *Screws v. United States*, 325 U. S. 91; *Catlette v. United States* (C. C. A. 4th, 1943), 132 F. 2d 902; *United States v. Trierweiler* (1943 E. D. Ill.), 52 Fed. Supp 4.)

identifiable groups, nor upon any fraction of society whatever under standards not applicable equally and alike to all persons similarly situated, for such legislation would constitute special legislation and would offend the constitutional prohibition against bills of attainder contained in Article 1, Section 9, Clause 3 of the Constitution. Finally, due process requires that penalty or punishment be imposed only upon a full hearing and determination of facts attended by those requirements of fair procedure traditionally recognized as essential to civilized justice.

The Committee here openly and flagrantly assumed power by "purge" to deprive petitioner of a lifetime's career and to impose upon him what this court has characterized as "punishment, and of a most severe type,"[7] without authority so to act of any kind, outside of all law and by and through processes established by its own fiat and conformable to no restraints save its own pleasure. This is the antithesis of due process. It is government by men where due process is government by law. If the Committee's conduct here be sanctioned by this Court, then a short circuit device nullifying the entire Constitution has been conceived and like hated predecessors the Committee may proclaim, "We *are* the Constitution."[8]

---

[7]*United States v. Lovett,* 328 U. S. 303, 316.

[8]The Committee certainly so conceived itself. It considered itself not merely above the law and unfettered by the Constitution, but, indeed, immune even from criticism by common mortal. In its eyes, the fact that the American people engaged in "criticizing individual members of Congress" is evidence of a "widespread movement to discredit the legislative branch of our government," and this is "the essence of totalitarianism" [Ex. 9 for Ident., J. A. 433]. In its eyes, to oppose a bill authored by a member of the Committee is plainly "un-American" Ex. 9 for Ident., J. A. 464] and to criticize the Committee as a committee is to necessarily reveal a "red, sympathetic record" [Ex. 9 for Ident., J. A. 428]. In fine, criticism of the Committee is outlawed [see, entire Ex. 9 for Ident., J. A. 249-53, 420 *et seq.*].

Our entire framework of constitutional law is based on the principle that no branch of our government may perform the functions delegated to any other branch. Disregard of this essential long continued would render a single branch of our government all-powerful; it would substitute an absolutist government for one of limited powers. Under our system, the legislative branch of government is granted only the power to establish standards of conduct operative *in futuro* and applicable equally to all persons. The application of such standards to specific individuals, the adjudication of guilt for violating the same and the imposition of penalties in consequence of violation are matters entrusted solely to the judicial branch of government. In the instant case, the Committee, as a mere fractional subdivision of one house within the legislative branch of government, had the power neither to establish standards for judging conduct nor to apply such standards to individuals suspected of violating the same. Yet this Committee did both. More—it established standards to be applied to past conduct, something not even the legislature as a whole might constitutionally do. And it applied those standards to specific individuals and adjudicated the guilt of and imposed punishment and penalty therefor upon such individuals without even affording such persons a full, fair or reasonable hearing, something not even a Court might constitutionally do.

In fine, the Committee made itself the State,—above the people and above the Constitution. The Committee made its own law. The Committee made its own adjudication of "guilt." The Committee made its own rules of procedure, evidence and hearing.

Moreover, the procedure followed by the Committee cast aside every concept of procedural due process. The Committee predetermined petitioner's "guilt"[9] it acted as prosecutor and judge;[10] it filed no charges; it confronted petitioner with none of the witnesses against him and denied cross-examination;[11] it accepted from these witnesses hearsay, rumor, gossip and reckless, unsubstantiated charges, opinions and conclusions[12] and coupled these with the doctrine of guilt by association to establish the

---

[9]Apropos the petitioner and nine similarly situated writers, directors and producers summoned before the Committee, Chairman Thomas stated before the Congress:

"The reason these ten individuals refuse to answer the question was because they were Communists. They knew that we had the evidence that they were Communists, and they knew we were in a position to expose their communist activities, which they had been engaged in over a period of years" [Deft. Ex. 11 for Ident., J. A. 546].

[10]See Deft. Exs. 9, 10 and 11 for Ident., in whole, J. A. 420 *et seq.*, 480 *et seq.*, and 546 *et seq.*

[11]Before the Committee, petitioner's attorney, Bartley Crum, Esq., specifically requested the right to confrontation and cross-examination, which requests were denied:

" 'Mr. Crum: May I request the right of cross-examination? I ask you to bring back and permit us to cross-examine the witnesses, Adolph Menjou, Fred Niblo, John Charles Moffitt, Richard Macauley, Rupert Hughes, Sam Wood, Ayn Rand, James McGuinness—

The Chairman: The request—

Mr. Crum: Howard Rushmore—

(The Chairman pounding gavel.)

Mr. Crum: Morrie Ryskind, Oliver Carlson—

The Chairman: The request is denied.' " [J. A. 214-15.]

[12]Witness the following example:

"Mr. Stripling: Has it ever been reported to you that certain members of the guild were Communists?

Mr. Reagan: Yes, sir; I have heard different discussions and some of them tagged as Communists.

Mr. Stripling: Have you ever heard that from any reliable source?

Mr. Reagan: Well, I considered the source as reliable at the time." [Deft. Ex. 10 for Ident., J. A. 536.]

"guilt" of the individual accused;[13] it refused effective aid of counsel;[14] it refused petitioner opportunity to defend or explain his thoughts and associations for which he stood "accused."[15]

Cf. Niznick v. United States (Mar. 7, 1949), C. C. A. 6, 173 Adv. F. 2d 328.

For refusal to answer questions in a proceeding aimed at him personally and designed to deprive him of liberty

---

[13]For example, on one occasion, the Committee extracted from a witness whom it, itself, termed the greatest expert on communism ever to appear before it, the three tests of "guilt" indicated by the excerpt below:

"'Mr. Nixon: You indicated that belonging to a Communist front organization, in other words, an association with Communists, attending these planned meetings, making statements in opposition to the capitalistic system are three of the tests you would apply.

Mr. Menjou: Yes, sir.

Mr. Nixon: Do you have any other tests from your experience you would like to give this committee?

Mr. Menjou: I don't know of any better ones.'" [Deft. Ex. 10 for Ident., J. A. 530-31.]

[14]At the opening of the Committee hearings concerning the motion picture industry, in October, 1947, the following occurred:

"The Chairman: Mr. McNutt, the Chair would like to inform you that it is the policy of this committee to permit counsel to advise his client, the witness here on the stand, of his constitutional rights, and only on the question of his constitutional rights.

I would like to say to counsel that we hope you will bear with us in that and that it will not be necessary at any time to remind you of that.

Mr. McNutt: I understand, Mr. Chairman. Of course, I should like to make a request to be permitted to cross-examine witnesses.

The Chairman: You will not have that permission. It is not the policy of the committee to permit counsel to cross-examine witnesses. You will only have the right, the solemn right, to advise your client, the witness, on his constitutional rights. Nothing else. You are no different from any of the other attorneys who have appeared before this committee this year in the many hearings that we have had." [Tr. of Committee Hearings, Oct. 20-30, 1947, p. 7.]

[15]J. A. 188-189.

and property outside of the law and without even pretense of compliance with or utilization of the due processes of law, the government would punish petitioner for contempt. It is petitioner's response that whenever governmental officers or bodies presume to act under color of their authority and through the facilities of their office to impose upon persons loss of liberty or property rights secured by the Constitution, such officers or bodies have no power to act outside of and above the law, but like all agencies of government whatever may lawfully act only by and through the due processes of law (*United States v. Classic,* 313 U. S. 299; *Screws v. United States,* 325 U. S. 91). Here the "effect" of the Committee's action ". . . was to inflict punishment without the safeguards of a judicial trial and 'determined by no previous law or fixed rule.' The Constitution declares that cannot be done either by a State or the United States." (*United States v. Lovett,* 328 U. S. 303, 316-317.)

It is a full defense to the charge against petitioner here seeking to punish him for contempt for his conduct in the course of the Committee proceedings here, that those proceedings were from beginning to end lawless, contrary to and outside of the due processes of law and, accordingly, beyond the jurisdiction of the Committee and void [*Estep v. United States,* 327 U. S. 114, 121; *Niznick v. United States,* 173 Adv. Fed. 2d 328; *McGrain v. Dougherty,* 273 U. S. 135, 176; *Jones v. Securities and Exchange Commission,* 298 U. S. 1, 25-26.)

IV.

The Statute Creating the House Committee on Un-American Activities on Its Face and Particularly as Construed and Applied Is Unconstitutional in That (1) It Permits Investigation of, and as Construed and Applied Has Been Used to Investigate, the Content of Speech and Ideas, an Area in Which No Legislation Is Possible Thereby Exceeding the Boundaries of Legislative Power Under Article I of the Constitution, (2) It Permits the Very Process of Investigation to Be Used, and as Generally Construed and Applied It Has Been Used, to Expose and Stigmatize the Content of Any and All Speech and Ideas Disapproved by the Members of the Committee, Thereby Impeding and Placing a Burden Upon Free Thought, Speech and Association in Violation of the First, Ninth and Tenth Amendments, and (3) The Statute Is so Vague and Ambiguous That, as Applied in a Criminal Case, It Violates the First Amendment and the Due Process Clause of the Fifth Amendment.

Before considering the merits of the point here to be urged, it may appropriately be noted that the constitutionality of the statute creating the Committee in the instant case is properly before this Court on this petition. The legislative branch of the government has here instructed the executive branch to prosecute petitioner before the judicial branch. *It* has invoked the jurisdiction of the courts and has demanded that the petitioner be punished by and through the judicial process.

The creation and functioning of legislative committees may ordinarily be solely a matter of legislative concern;

but when the actions of a legislative committee affect the private rights and liberties of specific aggrieved individuals and when such a committee undertakes to invoke the judicial process in aid of forfeiting those rights and liberties, then of necessity the legality of the committee and its acts becomes a matter of judicial concern. Were the law otherwise, Congress, as this case bears witness, might act against named individuals, stigmatize their reputations and destroy their chance to earn a living, without opportunity existing anywhere for challenge or review of the legislative act. Not even out of deference to one of the other great branches of government has the Court suffered such unconstitutional wrong to stand without remedy. *United States v. Lovett,* 328 U. S. 303, 314. This Court and its subsidiary tribunals cannot become an accomplice to unconstitutional action depriving citizens of rights in violation of constitutional guarantees. *Shelley v. Kraemer,* 334 U. S. 1.

Since the validity of the statute creating the Committee and defining its authority is properly before this Court in his case, it is petitioner's position that the statute must be stricken as void and unconstitutional. The statute on its face will be considered first; later, it will be demonstrated that the constitutional defects appearing on the face of the statute have been consistently manifested by its construction and application.

The core of the statute, Section 121(b) Legislative Reorganization Act of 1946, P. L. 601, Chap. 753, 79th Cong., 2nd Sess., 60 Stat. 828, amending Rule XI(1) (2) of the Rules of the House of Representatives, authorizes the Committee to investigate "propaganda" which is "un-American" or "subversive." This patently authorizes in-

vestigation into the *content* of speech and ideas as such.[1] Yet under the First Amendment Congress possesses in that area no power of regulation whatever. It matters not that Congress here has characterized the speech and ideas proceeded against as "subversive" and "un-American." The Amendment protects the right of men to believe what they will and to speak out concerning their beliefs, whether the ideas involved be deemed either beneficial or harmful by Congress. Congress may no more regulate speech because it choses to label it as "un-American" or "subversive" or as attacking "the principle of the form of government as guaranteed by our Constitution" than it may regulate ideas by classifying them in any other manner. *U. S. v. Ballard,* 322 U. S. 78, 86-7; *Thomas v. Collins,* 323 U. S. 516.

The command of the Constitution is that as to *all* speech, Congress shall pass *"no* law" regulating content. Even where the members of this Court have disagreed as to the applicability of the First Amendment there has been unanimous concurrence in the proposition that it prohibits all censorship or control of the *content* of speech. (*Kovacs v. Cooper,* 93 L. Ed. Adv. Op. 379.) The words "un-American" and "subversive" used in the statute are so vague that their meaning can only be established by the opinions and prejudices of those interpreting and applying them. The effect of the statute is to authorize investigation into those matters of opinion which the members of

[1]That Congress here has described the subject of its action as "propaganda," rather than "speech," is without consequence. Propaganda is but an emotional synonym for speech and advocacy. In the words of the Court of Appeals for the Second Circuit, "propaganda" may be defined as "a plan for the publication of a doctrine or system of principles." (*Leubuscher v. Commissioner,* 54 F. 2d 998, 1000; *cf.* Funk and Wagnalls International Dictionary (1935 ed.), p. 1985.)

the Committee, unhampered by any specific definition of their authority, may deem "un-American" or "subversive." The statute insofar as it uses the terms "un-American" and "subversive" authorizes not only entry into the field of opinion, speech and association but a limitless and uncontrolled invasion thereof.

Nor is the statute aided by the authorization to investigate "propaganda * * * (that) attacks the principle of the form of government as guaranteed by our Constitution." This phrase is hardly more specific than the words "un-American" or "subversive." Moreover our Constitution contemplates the possibility and the right of the people to make changes in our form of government—even fundamental changes affecting the important principles of that form of government. *Constitution,* Article V. Congress may no more legislate with respect to the right to advocate ideas supporting basic changes in our government than it may regulate ideas supporting minor modifications. (*Schneiderman v. U. S.,* 320 U. S. 118.) There can be no valid legislation controlling the *content* of ideas respecting the form and organization of government.

An investigation into the content of speech cannot possibly relate to or be in aid of any valid legislative function.[2] Where investigation by Congress cannot be related to nor made to subserve any permissible legislative object respecting such matter over which Congress is granted power of regulation, the investigation exceeds legislative right. In the words of this Court, the Government of

---

[2]True enough the statute speaks of investigations "that would aid Congress in any necessary remedial legislation." For the reasons stated, however, no legislation by Congress is possible in the area defined by the statute. Therefore the recitation of the legislative object is idle superfluity.

the United States is a government of "delegated, limited and enumerated powers." (*United States v. Harris,* 106 U. S. 629, 635.) And in the words of the Constitution, the authority of Congress is but authority to exercise the "legislative powers herein granted"[3] and no others. The powers expressly granted to Congress in Article I, Section 8, Clauses 1-18, together with such implied powers as may be found appropriate and essential to effective exercise of these powers, constitute the entirety of Congress' authority.

McCulloch v. Maryland, 4 Wheat. 316, 405;
Martin v. Hunter's Lessee, 1 Wheat. 304.

The power to investigate not being an express power, then where investigation is attempted by Congress, the inquiry in each case must be "whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it." (*United States v. Harris,* 106 U. S. 629, 636.) Were it otherwise, the assertion of the power to investigate or the use of implied powers as ends in themselves would effectively nullify all constitutional limitations on Congressional jurisdiction.

Kansas v. Colorado, 206 U. S. 46, 81;
United States v. Butler, 297 U. S. 1, 64;
Carter v. Carter Coal Co., 298 U. S. 238, 291.

In the instant case Congress and the Committee have defied these elementary principles. Under the statute the Committee has assumed power to "investigate" for the purpose of "exposure," independent of and unrelated to

---

[3]Article I, Section 1.

any possible legislation or the need therefor.[4] It claims that it may use its investigatory power *generally* to "expose," on the outright premise that "exposure" is a permissible *end in itself*.[5]

This is usurpation of power thrice multiplied. Investigation is an implied power only, exercisable only as an incident to and in aid of legislative objects within the scope of Congress' jurisdiction under the Constitution; and exposure is in turn but an incident of the limited and implied power of investigation.

McGrain v. Daugherty, 273 U. S. 135, 160 *et seq.*;
Kansas v. Colorado, 206 U. S. 46, 89;
Schechter v. United States, 295 U. S. 495, 528.

Were it to be conceded that in certain areas Congress should be indulged the power to investigate or expose,

---

[4]The statute scarcely purports to authorize the Committee to exercise such claimed power. By its terms it authorizes the Committee to "make from time to time investigations." It says nothing about hearings for the purpose of exposure as distinct from investigation. Furthermore, the investigations authorized are of (1) "un-American propaganda activities" and (2) "the diffusion . . . of subversive and un-American propaganda . . ." and (3) "all other questions in relation thereto that would aid Congress in any necessary remedial legislation." Sec. 121(b), Legislation Reorganization Act of 1946, P. L. 601, Chap. 753, 79th Cong., 2nd Sess., 60 Stat. 828. This indicates that Congress authorized hearings for the purpose of getting information "that would aid Congress in any necessary remedial legislation" and not for the purpose of exposure, as such.

[5]"This Committee is the only agency of government that has the power of exposure . . . there are many phases of un-American activities that cannot be reached by legislation or administrative action . . ." H. R. Rep. No. 1, 77th Cong., 2nd Sess., 16 (1940). See, also, H. R. Rep. No. 2, 76th Cong., 1st Sess. 13 (1939); H R. Rep. No. 2742, 79th Cong., 2nd Sess., 16 (1940).

The Chairman in his final statement at the close of the hearing on October 30, 1947, said: "This hearing has concerned itself principally with spotlighting Communistic personnel in the industry. [J. A. 484, 485. See, also, Ex. 10 for Ident., J. A. 480-486.]

free from requirement that the exercise of these powers bear reasonable relation to the gathering of facts useful to the task of legislating, assuredly no such concession may be tolerated within the area lying close to the First Amendment.

There is an obvious difference between exposure by Congress of the practices of governmental departments or its own membership and its exposure of the ideas and associations of private individuals. The former informs the sovereign people of the manner in which their servants perform their obligations and it is, therefore, consistent with our democratic institutions.[6]

The latter would give government an unprecedented power to exercise supervision and control over the people in the exercise of their sovereign liberties of speech, thought and association, and thereby destroy the very core of our democratic institutions. This domain of the First Amendment is utterly denied to government and it is denied for the most imperative of reasons. It is denied because it is the deepest premise of our way of life that the people, and they alone—free from governmental interference—may determine what ideas they shall accept and what ideas they shall reject by and through the freest interplay of opinion and speech in the market place of ideas. (*Thornhill v. Alabama,* 310 U. S. 88, 97-103; *Thomas v. Collins,* 323 U. S. 516, 543; *West Virginia*

---

[6]Those who have urged that the power of exposure is an important one and should be broadly indulged have invariably dealt with exposure of the operation of government agencies—an area most definitely within the scope of legislative power. See, for example, such articles as Potts, *Power of Legislative Bodies to Punish for Contempt,* 74 U. Pa. L. R. 691, 811; *Galloway, Investigative Function of Congress,* 21 Am. Pol. Sc. Rev. 47, 62; Cousens, *Investigations Under Legislative Authority,* 26 Georgetown L. J. 905, 918; McGeary, *The Developments of Congressional Investigative Power,* p. 104.

State Board of Education v. Barnette, 319 U. S. 624, 641; *Yick Wo v. Hopkins,* 118 U. S. 356, 370.) Here, the power of exposure which the Committee assumes for itself stretches the strong arm of government into that market place. This it may not do.

Thornhill v. Alabama, 310 U. S. 88, 97.

All of the foregoing is clear as a matter of principle alone. But the record in the instant case illustrates and emphasizes the fundamental wisdom of the doctrine by revealing in practice what the principle comprehends in theory. Here the evils inherent in such a grant of power as is claimed by the Committee are revealed with naked clarity by the actual exercise of claimed power by the Committee. Exposure no longer has as its objective the providing of the legislature with requisite information. Exposure is used as the means of depriving non-conformists of their means of livelihood and of inflicting other pains and penalties upon those who refuse to yield to the inquisitions of our times.[7] The power to expose now means the power to punish—to punish without a law providing for punishment and without a trial in which "guilt" is determined—and all because men allegedly hold ideas and join in associations which this Committee has declared *verboten.*

The petitioner, through offers of proof and requests that the Court take judicial notice of certain facts, has made a record which reveals the extent of the thought control which this Committee would impose upon the American people. The offers establish that the Committee

[7]Thus, for example, during the hearings the Committee Chairman said, ". . . you persons high up in the industry can do more to clean your own house than can anybody else, but you must have the will power, and we hope that by spotlighting these Communists you will acquire that will." [J. A. 522.]

construed and applied its authority to permit it to determine without limit what opinion, speech and association is to be censured and then to utilize its powers to suppress what it has condemned. It has been used, not as an instrumentality to inform the Congress as to what legislation it should enact but rather as a means of determining for the people what ideas they might safely hold, express and associate to support. It has not deemed itself responsible to the people; instead it has held the people accountable to it. It has called many witnesses not for the purpose of getting facts from them; rather it has required witnesses to appear in order to be instructed as to what they should do in their private lives and their private businesses.

The unlimited character of the investigatory power into thought and speech as it appears upon the face of the statute has been utilized by the Committee to the very hilt. The range of ideas upon which the Committee has sat in judgment and issued denunciations touches every controversial subject in modern American life. The epithets "un-American" and "subversive" have been hurled at advocacy of racial equality, adherence to the New Deal, support of rent control, opposition to cartels, action on behalf of the Geyer Anti-Poll Tax Bill, condemnation of denial of meeting places to Henry Wallace, etc., etc. More than 1,200 organizations and in excess of 1,000,000 individuals have been cast outside the pale of Americanism by this Committee. Careers have been ruined, jobs lost, reputations besmirched by the utilization of claimed governmental power by this Committee. Above all, it has hampered free speech and association in a manner and to an extent unequalled in our history.

This Court is properly not concerned here with the wisdom of the views expressed or positions taken by the Committee and petitioner does not otherwise contend. For this Court has no greater right to censor or pass upon the political views of the members of the Committee than the Committee had to censor the opinions of private citizens. What this Court is concerned with is the lawfulness and constitutionality of the Committee's assertions of power and of the statute claimed to authorize the same. Whether a statute may create a congressional committee as the arbiter of orthodoxy in the field of political, social and economic ideas presents a vital question which cries out today for determination by this Court.

It is petitioner's position that however facile may be the spokesmen for such a committee in devising justifications for such action, such spokesmen can never escape the simple truth which stands forth in the record here with such tragic clarity—namely, that the statute here, upon its face and as generally construed and applied by the Committee, and as particularly applied in this investigation, has laid a fearful burden upon freedom of speech, press, thought and association, and is, therefore, unconstitutional, unlawful and void. (*Grosjean v. American Press Co.*, 297 U. S. 233.) Indeed, the Court below concedes that the statute does burden speech but justifies such burden on the premise that it is laid upon a vital subject, and an important medium of communication.

Speech and association are not free if they may be exercised only under constant threat of official exposure and condemnation. Legislation which permits the impo-

sition of such burdens upon speech and association trespasses upon the express limitations of the First Amendment. For a citizen to defy and challenge the exercise of power under such legislation can be no punishable offense, since it is but the performance of his sovereign duty as a citizen and as a man.

As for the contention that the power of investigation must necessarily be broader than the legislation possibly flowing therefrom, is it not apparent that "civil liberties may not be abridged in order to determine whether they should be abridged"?

Finally, and apart from considerations of freedom of speech, press, thought and association and the other considerations heretofore discussed, the statute is separately unconstitutional on its face because the vagueness of the terms "un-American" and "subversive" and of the phrase "the principle of the form of government as guaranteed by our Constitution," employed in the statute render it so ambiguous and devoid of ascertainable meaning as to offend the due process clause of the Fifth Amendment.

United States v. Reese, 92 U. S. 214;
Cline v. Frink Dairy Co., 274 U. S. 445;
Winters v. New York, 333 U. S. 507.

The statute manifestly can have only such meaning as the views and prejudices of the Committee members place upon it. Particularly where it enters the area of the First Amendment, such a statute when it is involved in a criminal case must be stricken as offensive to the due process clause of the Fifth Amendment.

V.

The Trial Court Committed Numerous Prejudicial Errors and Denied Petitioner a Fair Trial Under the Sixth Amendment by Its Rulings, Instructions and Comments.

A. The Subcommittee Before Which Petitioner Appeared Was Not Shown to Be a Lawfully Constituted Tribunal, and the Trial Court Committed Prejudicial Error by Reason of Its Rulings and Instructions Which Prevented the Jury From Considering This Fact in Reaching Its Verdict.

The House Committee on Un-American Activities is a standing committee consisting of nine members, (Legislative Reorganization Act of 1946, 60 Stats. 812, Sec. 121). Only eight members have actually been designated as members of the Committee by the House of Representatives. [Govt. Ex. 3, J. A. 380.]

On the day petitioner testified only three of the members of the Committee including the chairman were present. The chairman announced that a sub-committee was present, consisting of himself and the other two members. [J. A. 185-186, 197-198.]

Despite objections by the petitioner the trial court permitted the chairman of the committee to testify first, that he had the authority to appoint a sub-committee, without stating when, where or how that authority had been obtained, and second, that he exercised this authority on the day the petitioner testified by announcing that a sub-committee was present consisting of himself and the other two members of the committee in attendance. [J. A. 185-186, 197-198.] Aside from the testimony of the formation of the committee as a whole and the designation of its members by the House of Representatives,

this constitutes the entire proof in the record of the existence of a legally competent tribunal.[1]

The trial court did not even permit the jury to determine for itself whether the chairman's naked assertion concerning his power satisfied it that the authority claimed actually existed. Instead he instructed the jury that if it was established that the chairman designated a subcommittee, then that proof, in and of itself, required the jury to find the existence of a validly constituted subcommittee. [J. A. 355.] Thus the jury was in effect told that, as a matter of law, the chairman had the authority which he asserted.[2]

Nowhere in the statute creating the committee or in any other statute or provision of law is there any proviso

---

[1]These hearings were marked by the persistent absenteeism of members of the Committee. Only three members were present at the opening of the hearings October 20, 1947 [Comm. Tr. 1]; four were present at the outset of the hearings on October 21 [Comm. Tr. 91], on October 22, [Comm. Tr. 135] and on October 23, [Comm. Tr. 189] on October 24, only two were present [Comm. Tr. 229]. Each morning the chairman announced that a subcommittee was present, in each case indicating that the sub-committee consisted of those members who happened to be present at that time. On October 21, a 5th member of the Committee came into the hearings late and at that point the chairman said, "I want to show that Mr. Wood is here. We now have a quorum of the full committee." [Comm. Tr. 93.] Actually the committee acted through who ever happened to be present at any given time. Certainly it cannot be that a legally competent tribunal may have the number and composition of its membership determined upon the happenchance of who happens to be present at any given time without any continuity whatsoever of the personnel of the said tribunal. Nor is the situation bettered by calling who ever happens to be present either a committee or a sub-committee.

[2]It is submitted that the instructions, requested by the petitioner and refused by the trial court, to the effect that the committee must act through a quorum or through a sub-committee appointed or in some manner authorized by the full committee (petitioner's proposed instructions Nos. 37-48, inclusive. [J. A. 372-375].) correctly state the law.

that the chairman may determine when sub-committees should sit or how they should be constituted. The House specifically delegated its powers to investigate to those 8 named members of the committee [Govt. Ex. 3 J. A. 380]. This delegated power then resided in a majority, i.e., a quorum, of these 8 members. This majority, in turn, could delegate its power insofar as any specific investigation was concerned, to a sub-committee, either by directly designating the sub-committee or by authorizing its chairman to do so [see *Norris v. United States,* 300 U. S. 564, 569; *United States v. Seymour,* 50 Fed. 2d 930].

But there is no evidence in this record that the majority of the committee ever so delegated its power. If it had, this would have been a fact incumbent upon the Government to prove before the jury, just as it proved, through its exhibit 3, the original delegation of power by the House to the committee.[3]

The government not only did not prove this fact, but when petitioner attempted to prove its non-existence by subpoenaing the records of the committee, the trial court completely thwarted his efforts by granting the Government's motions to quash the subpoenas. [J. A. 344-346.]

Here the factual question as to the authority of the chairman to determine that a sub-committee should sit and to designate it, was taken from the jury—just as in the case of *Christoffel v. United States,* (No. 528, decided June 27, 1949) the question of the existence of

[3]In the case of *Meyers v. U. S.,* 171 Fed. 2d 800, the committee ratified the appointment of a sub-committee by the chairman. This ratification, which took place several months before Gen. Meyers testified, had the same effect as an appointment on delegation of authority to appoint, made by the committee in the first instance.

a quorum was taken away from the jury. Moreover, in the *Christoffel* case, the existence of a legally constituted tribunal, at the time the hearing was commenced, was conceded. Here the issue presented involves the far more serious question as to whether such a tribunal ever came into being.

Not only is there no support by statute rule or regulation for the proposition that the chairman has the authority here claimed, but the legislative history of the Legislative Reorganization Act of 1946, 60 Stat. 812, indicates that Congress intended no such grant of power. In the committee report regarding that Act the following appears:

> "Every chairman, even though he is the executive of the committee, should be bound by the decisions of its members as expressed in regular committee session." [Report of the Joint Committee on the Organization of Congress—pursuant to House Cong. Res. 18—Rep. No. 1011 in Section 1, subdivision 6 thereof].

This indication of legislative intent is simply a restatement of the familiar rule that in the absence of a delegation of authority from the entire body, acting through a quorum, no minority thereof, let alone the chairman or any other single individual, may bind the majority or act on behalf of the entire body. [*United States v. Ballin, Joseph & Co.*, 44 U. S. 1 at 7].

Moreover by his instructions the trial judge also determined for the jury the question of fact as to whether Chairman Thomas, by his assertion that a sub-committee was sitting, had designated a committee. Thereby every question of fact concerning the existence of a legally competent tribunal was taken away from the jury.

The judge charged the jury:

> "Evidence introduced during the trial has indicated that the chairman of the committee . . . on Oct. 27, 1947, *convened a meeting of a subcommittee designated by him* to be Congressman McDowell, Congressman Vail, and himself." [J. A. 355]. (Emphasis added.)

He then went on to instruct the jury that in order to find that there was a validly constituted sub-committee, the jury need only determine that the chairman "designated Congressman McDowell, Congressman Vail, and himself as a subcommittee." Thus the judge first told the jury that the chairman had designated a sub-committee and then informed the jury that if it found that the chairman did designate a sub-committee, it must find that there was a validly constituted sub-committee.[4]

To leave no doubt about the fact that he did not consider the existence of a validly constituted tribunal an issue to be decided by the jury, the court charged:

> "If you believe, and believe beyond a reasonable doubt, that the defendant appeared before the committee—and that is not controverted by the defense —that he was sworn—and that is not controverted —and that he was asked some questions—and that

---

[4]That the trial judge intended to decide this question as a matter of law is indicated by the following discussion which took place when he granted the government's motion to quash the petitioner's subpoenas directed to records related to this issue:

> "The Court: Well, here it is very clear that Public Law 601 authorizes the Committee on Un-American Activities to act as a whole or by subcommittee to investigate propaganda activities. It is undisputed that there was a Committee on Un-American Activities of the House, of which J. Parnell Thomas was the chairman. It is also undisputed, because of the evidence by Chairman Thomas and by the transcript of the record itself, that a meeting was held on October 27, 1947,

is not controverted—and that he refused to answer questions, it is your duty under the law to return a verdict of guilty . . . So that, as I say, if you believe beyond a reasonable doubt that the question was asked and the defendant did not give a responsive reply, it is your duty under the law to return a verdict of guilty." [J. A. 358.]

By these instructions the court informed the jury that the only issue which was controverted and which was before it was whether there was a refusal to answer.

In *Fleishman v. United States* (U.S.C.A.-D.C. No. 9852, decided April 8, 1949, Govt. petition for cert., No. 838, Oct. Term, 1948, still pending), a contempt conviction was reversed because the question of whether the committee members present constituted a quorum, i.e., a legally competent tribunal, was decided by the trial court alone. The appellate court reversed, stating that the quorum issue was one of fact for the jury to decide, and, therefore, even if the evidence on that matter were conclusive, it should not be determined by the court as a matter of law.

Such a determination was made by the trial court here.

As has been noted above, the *Christoffel* case is determinative of the issues presented here. However, the error here is more aggravated than that in the *Christoffel* case.

---

at which time the chairman of the committee designated Congressman McDowell, Congressman Vail, and Congressman Thomas as the subcommittee to conduct those hearings. So I will rule that that is a validly constituted committee, and you may have an exception.

"Mr. Kenny: Your Honor, I think, to make the record clear—

"The Court: Oh. yes, I want the record clear, because if I am wrong, you can appeal it.

"Mr. Kenny: You are granting the motion of the Government to quash?"

"The Court: That is correct." [J. A. 346].

There the Government established, as the opinion points out, that the hearing was before a legally convened Congressional committee as appeared "from the committee's records." Thus in the cited case, as distinguished from the instant case, the government's proof was based on the Committee records. Here, however, the committee's records, if any, were excluded by the court. There the Government relied on the best evidence; here the best evidence was kept out of the record.

Section 133(b) of the Legislative Reorganization Act of 1946 requires that each committee "shall keep a complete record of all committee action." Where a public body is required by law to keep records, it can only act by means of making a record [*State ex rel School District of Afton v. Smith,* 336 Missouri 703, 80 Fed. 2d 858; *People v. Cleveland* 271 Ill. 226, 110 N.E. 843]. The trial judge, by his rulings, refused to permit the petitioner to produce records which not only were the best evidence, but which were the only competent evidence on this issue.

This is not merely a technical point. Convictions for much more serious crimes involving moral turpitude have been reversed by this court where lack of authority was demonstrated in the officer or tribunal before whom the critical act took place. [See *United States v. Curtis,* 107 U. S. 671, and cases cited in the annotation of said case at 27 L. Ed. 534.]

The question involved herein is not an "intra parliamentary controversy" which this court has properly left to parliaments [*Coleman v. Miller,* 307 U. S., 456, 469]. The application of the rules of Congress properly becomes a judicial question when it affects the rights of a non-member [*United States v. Smith,* 286 U. S. 6, 33].

B. The Charge of the Court That (a) a Non-Responsive Reply, or (b) a Reply That Seems Unclear to the Jury Is Per Se Conclusive Proof of a Refusal to Answer, and the Comments of the Court to the Effect That Petitioner Was Not Trying to Answer the Question Constituted Prejudicial Error.

The central, if not the only issue of fact which the Court permitted the jury to determine was whether there was proof of a refusal to answer. In its charge the Court said:

> ". . . If you believe beyond a reasonable doubt that the question was asked and that the defendant *did not give* a responsive reply, it is your duty under the law to return a verdict of guilty." [J. A. 358; emphasis added.]

The Court further charged:

> ". . . The nature of the activities of the defendant is not an issue in this case, and it is your duty entirely to disregard any speculation on that subject. In other words, whether or not the defendant is or was not a member of the Communist Party actually is not relevant to this case." [J. A. 356.]

* * * * * * * *

> *"Now in testing whether or not you believe from the evidence that the defendant answered the question propounded by the Committee, you must decide for yourself whether or not the answers given by the defendant satisfy you now as to whether or not he ever was or is a member of the Communist Party. If you can come to a conclusion by the replies the defendant gave to those questions . . . if you can answer by those replies . . . as to whether or not he ever was or is now a member of the Communist Party, then, of course, it is your duty to*

return a verdict of not guilty. If you cannot, you must return a verdict of guilty." [J. A. 359;* emphasis added.]

The error of these instructions consisted of (1) the equation of a *failure* to give a responsive answer with a refusal to answer, (2) the requirement that guilt be found if there were an *unclear* answer, which the Court thereby ruled was the same as a *refusal* to answer, (3) the effective determination *as a matter of law* of the only question purportedly submitted to the jury, resulting from the elimination from the jury's consideration of the circumstances from which it might determine whether there had been a *refusal* to answer, and (4) the misleading and ambiguous language in the instructions which could only confuse the jury in determining whether there had been a *refusal* to answer.

1. The Court advised the jury that if the petitioner "did not give a responsive reply" he was guilty. Thus the words "did not give a responsive reply" (*i. e.*, failure to answer responsively) are substituted for "refusal" (*i. e.*, a deliberate and intentional act). By no conceivable test . . . whether it be the test laid down in *Fields v. United States,* 164 F. 2d 97, 82 U. S. App. D. C. 354, which requires the Government to show the refusal to be deliberate, or the test in *United States v. Murdock,* 290 U. S. 392, which requires the Government to show evil motive or bad purpose, as well as deliberateness . . . has it ever before been suggested that a person is guilty of criminal contempt merely because the witness *fails to or does not give* a responsive answer.

*It is submitted that the law was correctly stated in petitioner's proposed instructions Nos. 61 and 66, as well as Nos. 49-60 incl., and Nos. 62-66, incl., all of which were refused [J. A. 347, 375-378].

2. By instructing the jury that a conviction was required if the jury could not determine from the petitioner's answers whether or not he was a Communist, the Court declared an unclear answer to be the equivalent of a refusal to answer.

The offense defined by the statute is the deliberate and intentional refusal to answer a pertinent question. An unclear answer may be some evidence of a deliberate refusal to answer; and perhaps the Court might have so instructed. But the fact that the jury might be unable to attribute a completely responsive meaning to a reply cannot be accepted as conclusive proof of a refusal to answer. And not every non-responsive reply is necessarily criminally contumacious. If it were so, then few witnesses anywhere could escape the reach of Section 192.*

This charge directs guilt where a jury may have reasonable doubt respecting the responsive or non-responsive quality of a reply to a question; customarily such reasonable doubt demands a verdict of not guilty. Here, however, this doubt becomes paradoxically the hallmark of guilt.

---

*The confusion attending this instruction concerning responsiveness is increased by a consideration of the uncertainty as a matter of law of the meaning of a "responsive" answer and the uncertainty as to the legal effect of an assertedly non-responsive answer. Professor Wigmore in his work on Evidence (3rd Ed., Par. 785), deals fully with the subject and states:

> "Paragraph 785. NON-RESPONSIVE ANSWERS. Where the witness, either in a deposition or on the stand, goes beyond the scope of the question and makes an answer not responsive, there is here nothing *per se* wrong. . . . This topic of responsiveness has somehow become in modern times beset with crude misunderstanding that tend to suppress truth and turn the inquiry into a logomachy. . . . No party is owner of facts in his private right. No party can impose silence on the witness called by justice."

3. In determining whether there had in fact been a refusal to answer, as distinguished from a failure to answer or an unclear answer, the jury had to consider whether under all the circumstances shown there was such a refusal.

The evidence before the jury showed that Mr. Lawson, while on the witness stand, had made a number of requests and statements, among which were (1) that he be allowed to read to the Committee a full statement of his position, as had witnesses who had preceded him, (2) that witnesses be called back for cross-examination to prove that they had perjured themselves when maligning him and calling for his discharge and to show what the Committee really was seeking to do, and (3) that the questions were in violation of his constitutional rights.

And the record shows that while in the middle of a response, and after much gavel pounding, the defendant was ordered from the stand by the Chairman's command to the bailiffs—"Officers, take this man away from the stand." In any and all events the Court should have directed the jury to weigh all of these circumstances in determining whether, assuming a failure to answer, it had been so deliberate and intentional as to constitute a refusal.

Obviously, the jury could not tell from the petitioner's answers whether or not he was a Communist. Therefore, the *practical* effect of precluding consideration of all other circumstances was to instruct the jury that there had been a refusal to answer.

4. At the very least the instructions are confusing, equivocal and misleading, first as to whether the test of refusal is the clarity or lack of clarity of the reply or whether it is the responsiveness or non-responsiveness of

the answer, and, second, as to the extent to which the determination by the jury of petitioner's membership or nonmembership in the Communist Party was relevant to the issues submitted to the jury. Instructions so framed constitute prejudicial error.

Kraus v. U. S., 327 U. S. 614;
Bihn v. U. S., 328 U. S. 633.

5. The erroneous instructions were aggravated by the Court's comment during argument to the jury wherein the jury was told by the trial judge that there "was nothing in the record to indicate that he (petitioner) was trying to answer the question" and that defendant's statement of his reason for objecting to the question "is not in the case." These comments were made despite the fact that the charge to the jury included the following:

> "The defendant takes the position, through its counsel, in arguing the case to you, from the evidence submitted by the government and the transcript of the case, that he was attempting to answer the questions; . . ." [J. A. 357.]

During the course of defense argument to the jury the following occurred:

> "Mr. Kenny (Counsel for Petitioner): . . . He was trying to answer it in his own way.
>
> Mr. Hitz (Counsel for the Government): Just a minute; I will have to object again. There is no evidence that Mr. Lawson was trying to answer the question.
>
> Mr. Kenny: Isn't that the question the jury has to decide?
>
> The Court: There is nothing in the record to indicate that he was trying to answer the question. You can refer to the record.

Mr. Kenny: That is correct. That is what I will argue at length, and in so answering he said he was trying to protect the rights of everyone regardless of politics or religion. . . .

Mr. Kenny: . . . I say to you, Mr. Hitz, it is right in the transcript. Mr. Lawson said—I will have to have a little more time if I have to argue this piecemeal—he said the right of immunity of American citizens will be prejudiced, Jews, Catholics, Republicans, Democrats, or anyone else. That is what he was talking about when he was finally removed from the witness stand. He said, 'You are trying to destroy—' and the chairman said, 'Officer, take this man away from the stand.' He was in the middle of a sentence when he was ordered from the stand.

Mr. Hitz: I will have to object again. I think the reason given by this man is not in the case.

The Court: No, it isn't." [J. A. *Lawson,* 348-349.]

These were critically important and unfair comments by the Court on the ultimate factual issue which was the jury's to resolve and constituted prejudicial error.

Patton v. U. S., 281 U. S. 276;

United States v. Murdock, 290 U. S. 389, 392.

Certainly the trial court did not follow the rule of this Court that "the decision of issues of fact must be fairly left to the jury" and that the trial judge must use great care that his expression of opinion should not be *misleading* or *one sided.*

Quercia v. United States, 289 U. S. 469;

Bollenbach v. United States, 326 U. S. 606.

C. The Trial Court Committed Prejudicial Error in Refusing to Permit Cross-Examination of the Principal Prosecution Witness, J. Parnell Thomas.

Aside from the introduction of formal documents (such as the resolution setting up the House Committee on Un-American Activities and the subpoena [Prosecution Ex. 1 *et seq.*]) the testimony of Congressman J. Parnell Thomas was the *only* prosecution evidence. He testified to the questions put to the petitioner before the Committee, and he testified concerning the alleged refusal of the petitioner to answer. Without his testimony, no *corpus delicti*, no crime of any kind, was shown. Nevertheless, all effort effectively to cross-examine this witness was shut off by the trial court. To illustrate:

(a) On direct examination, before the jury, the Court, itself, asked the witness the following question:

> "Q. With reference to those dates, Congressman, that you referred to on the cover of that transcript, what was the committee investigating at that time? A. We were investigating Communist infiltration in the motion picture industry.
>
> The Court: Very well." [J. A. 197.]

A motion on behalf of petitioner to strike the answer was denied [J. A. 197-198]. Nevertheless, the efforts of the defense to cross-examine the witness on this answer were prevented by the rulings of the Court [J. A. 202-203].

If cross-examination had been allowed, petitioner would have had the opportunity to establish his contention that the Committee was not actually investigating anything, but on the contrary was carrying on a proceeding designed to blacklist the defendant and to censure the screen.

If evidence as to what the Committee was engaged in doing was not admissible, it should have been stricken by the Court; if it were admissible, cross-examination should have been allowed. By its inconsistency, the Court committed error. This error was magnified by the Court's charge to the jury:

> "You will recall that the testimony tended to show that the committee was investigating the infiltration of communism in the motion picture industry. . . ." [J. A. 355.]

(b) The witness testified on direct examination respecting some of the things which happened while the petitioner was on the stand on October 27, 1947. The petitioner by cross-examination attempted to show the written statement which the defendant had tried to present to the Committee while he was before it [J. A. 199] and the efforts of the defendant (made at the same time) to be allowed to question those Committee witnesses who had testified against him during that same hearing and prior to the defendant's taking the witness chair [J. A. 214-216]. The defendant's attempt to develop these matters by the cross-examination of Mr. Thomas was no more than the equivalent of an effort to get before the jury the whole of a conversation after a part of it had been introduced.

Without knowledge of all the circumstances, the jury might have considered the petitioner's responses deliberately evasive, perhaps even offensive; on the other hand, had the jury been allowed to hear all of the attendant circumstances, it might have concluded that petitioner was raising reasonable objections and was not refusing to answer the question.

The accused was entitled to the jury's determination of this issue, aided by all the light that might be brought to it through cross-examination.

The denial of cross-examination was prejudicial error, regardless of whether it should be concluded that there was sufficient evidence to support the jury's finding.

Arine v. U. S. (C. C. A. 9th), 10 F. 2d 778;

Bollenbach v. United States, 326 U. S. 615.

(c) On direct examination on the issue of pertinency, the witness read into the record certain of the testimony relating to the petitioner given at the Committee hearings prior to the time that the petitioner testified before the Committee [J. A. 188-197]. On cross-examination the defense sought to introduce other portions of the testimony given at the hearing at the same time and on the same subject matter [J. A. 219-244]. These attempts were cut short, apparently on the theory that the question put to petitioner was pertinent as a matter of law [J. A. 207]. Accordingly, the defense moved to strike the evidence offered by the government on the question of pertinency, but this motion was denied [J. A. 243-244].

The Court thus determined the question of pertinency on the basis of the prosecution's evidence on pertinency (having refused to strike that testimony) while denying to petitioner the opportunity on cross-examination to ask questions concerning and to develop further precisely those matters brought out on direct examination and relied on by the prosecution.

D. The Court Committed Prejudicial Error in Excluding Petitioner's Evidence That the Committee Failed to Certify to the House of Representatives All of the Material Facts Relating to the Alleged Failure to Answer.

When a committee witness fails to answer a pertinent question, the "fact of such failure" must be reported to the House of Representatives (Act of June 22, 1938, c. 595, 54 Stats. 942, U. S. C. Title 2, Sec. 194).

Petitioner contends that this requirement of Section 194 is jurisdictional in a proceeding against a non-member of the House, and that it was not complied with by the Committee in his case. He offered evidence to show that in its report to the House, the Committee suppressed his prepared statement, his motions to quash his subpoena, and his application to recall certain witnesses for the purpose of cross-examination. This offer was rejected by the Trial Court [J. A. 215, 303-305].

This Court said in *In re Chapman,* 166 U. S. 661, 667:

> "When the facts are reported to the particular House, the question or questions may undoubtedly be withdrawn or modified or the presiding officer directed not to certify."

The matters excluded by the Committee from the consideration of the entire House were substantial. This Court can properly assume that the members of the House of Representatives share with other Americans a desire for fair play. If the Committee's denial of petitioner's request to recall and cross-examine witnesses who had attacked him had been revealed to the members of the entire House, they might well have refused to certify the contempt charges. However, this Court is not required to speculate on what action the House might have taken, once the failure to follow the statutory requirement has been established.

Kwock Jan Fat v. White, 253 U. S. 454, 463.

E. Utilization of Government Employees as Jurors in This Particular Case Involving the House Committee on Un-American Activities as the Governmental Agency Directly Interested in the Prosecution, Constituted Prejudicial Error.

This case presents essentially the same issues with respect to the use of Government employees on the jury as is involved in the case of *Dennis v. United States* (cert. granted June 27, 1949, No. 436). The issue was presented to the Trial Court by motions for change of venue, by challenges for cause directed to Government employees, and by requests for additional peremptory challenges after the exhaustion of those allowed by the Court, all of which the Court denied.

Out of thirty persons on the jury panel from which the trial jury was selected, fifteen were Government employees [J. A. 138-140], six others had immediate members of the family who were Government employees [J. A. 142] and one other had a mother on Government pension [J. A. 143]. The jury as finally constituted included five Government employees, one juror who was receiving a pension from the Government and one whose mother was on a Government pension [J. A. 142, 143, 167-168].

In support of his position, the petitioner showed the predominance of Government employees on jury panels; the interest of the House Committee on Un-American Activities in the prosecution; the public announcements of the Committee that it would seek the discharge of all Government employees whose loyalty was in doubt, including those who expressed sympathetic association with

members of organizations designated as subversive by the Committee; the fact that the Committee had widely publicized its claim that the petitioner was a member of many of the organizations denounced as subversive by the Committee; the existence on the part of Government employees of fear that any action which did not meet the Committee's approval would lead to discharge from Government employment, the fact that this fear was intensified by Executive Order 9835, which was particularly applicable in this case because the petitioner had publicly supported organizations placed upon the outlaw list pursuant to said order; and the fact that prominent persons connected with Government had been pilloried for less sympathetic association with condemned individuals or organizations than might be deemed manifested by a vote of 'not guilty' in petitioner's case [J. A. 13-25].

In such a strained setting can it reasonably be urged that Government employees could dispassionately and impartially sit as jurors on a case wherein the activity of this Committee was involved and was being sharply challenged by a citizen who had long opposed the standards set up by this Committee and who, in his testimony before the Committee on October 27, 1947, had repeatedly criticized it particularly where this testimony was the heart of the criminal contempt case which the Government employee-juror was to pass upon?

The prejudicial effect of the presence of Government employees on the jury was aggravated by the limitations placed upon *voir dire* examination designed to elicit actual

bias. The defense, as distinguished from the prosecution, was required to submit its questions on *voir dire* in writing; many appropriate questions were disallowed; others were modified. Defense counsel was censored for repetition of questions, even where it was done at the request of veniremen. The prospective jurors under interrogation were not placed in the jury box and the physical set up was such that effective observation of the jurors questioned was impossible [J. A. 100-138].

Thus the petitioner was tried by a jury composed largely of Government employees, in a case in which Government employees might well believe that their jobs would be jeopardized if the defendant was acquitted, and without adequate opportunity to determine the actual bias of the jurors. This case presents a situation equally entitled to review as that involved in the case of *Dennis v. United States,* pending before this Court. See also *Crawford v. United States,* 212 U. S. at pages 193-196.

F. The Trial Court Erred in Denying Petitioner's Challenge and Motion to Dismiss the Jury Panel in That (1) the Use of Questionnaire Containing the Question Whether the Prospective Juror Holds Any "Views Opposed to the American Form of Government" Was Improper and Invalidated the Jury Panel, Particularly in the Present Case, and (2) the Petitioner's Right to an Impartial Jury Drawn From a Cross-Section of the Community Was Abrogated by the Establishment of Qualifications for Jury Service Other Than Those Required by Statute and Which Limited the Representative Character of the Jury.

All prospective jurors were required to fill out a questionnaire which included the following question:

> "Have you any views opposed to the American form of government?"

Its purpose was indicated by a Jury Commission as to test "whether a person was a good and lawful citizen" [J. A. 87].

Nowhere in the statute establishing the qualifications for jury service (Title II, Section 1417, of the District of Columbia Code) is there any reference to a person's views, unless it be deemed that the phrase "good and lawful person" found in the statute refers to a person's ideas or beliefs. It is submitted that this phrase is intended to deal with a person's conduct and not his views, and that it was not the intention of Congress to make eligibility for jury service dependent upon a complete and unqualified belief that the American form of government is so perfect as to require no change whatsoever.

It can hardly be doubted that in the City of Washington there are many persons who would hesitate to answer the question concerning his views, and who therefore would either not answer it in the first instance or would fail to return the questionnaire because of the presence of this

question. The fact that the question is apparently made a test for jury service inevitably instills in the minds of the prospective juror the concept that it is his responsibility not merely to sustain the Constitution in accordance with the instructions of the Court, but that a person who does not believe that the present form of government should continue completely unchanged is to be condemned. The prejudicial effect of this question in the instant case, where the charge is that the defendant refused to answer a question as to whether he was or ever had been a member of the Communist Party, cannot be doubted.

Cf. Gideon v. United States (C. C. A. 8th, 1931), 52 F. 2d 427.

For the purpose of determining whether a juror has sufficient "intelligence" to qualify as a juror, the Jury Commission examined the quality of the handwriting on the questionnaires, any striking out of words, other "messy" conditions and any misspelling [J. A. 65-82]. The Jury Commissioner explained "It is merely a question of how I interpret a form as to intelligence and ability to serve on a jury" [J. A. 77].

The Jury Commissioner testified that he knew of no case in which a person in a high economic classification was disqualified because of bad handwriting or because of the manner in which the questionnaire was filled out, except one man whose handwriting indicated he had palsy and who was therefore physically disqualified [J. A. 89-90]. All the persons disqualified because of the Jury Commissioner's interpretation of a form "as to intelligence and ability to serve on a jury" were in the lower economic brackets. In explanation of this circumstance the Jury Commissioner testified that the fact that a man is a "cafeteria worker" or a "houseman" effects the dis-

qualification only "incidentally" and "only indirectly" [J. A. 82-84]; that when eligibility is considered, occupation "is one of the last things I look at in reviewing these cases"; that it is given consideration "finally . . . but not in the initial stages" [J. A. 89-90]. The only "intelligence" requirement for jury service in the District of Columbia is the ability "to read and write and to understand the English language." Yet persons who were obviously able to read, write, and understand were disqualified because they had not met the alleged intelligence standards arbitrarily applied by the Jury Commission.

It may be that minor technical departures from the method of jury selection prescribed by statute should not invalidate a jury panel. However, where the departure is not merely technical but is such that it renders the jury panel less representative than it would be if the statute were followed, the result is prejudicial and it should not be allowed.

Glasser v. United States, 315 U. S. 60, 85;
Thiel v. Southern Pacific Co., 328 U. S. 217.

Nor is it of any significance that the discrimination is allegedly based upon standards of intelligence. The important fact is that persons with relatively similar questionnaires were treated differently solely because of differences in their economic status.

As this Court said, in *Smith v. Texas,* 311 U. S. 128:

> "If there has been discrimination, whether accomplished ingeniously, or ingenuously, the conviction cannot stand."

In this case, the Jury Commissioner did not apply the same standard in determining the qualifications of persons in higher economic brackets that he applied to those in lower economic brackets. Regardless of motive and

whether the system of selection be denominated ingenuous or ingenious, the result is the same — discrimination against those in the lower economic groups—a method of selection contrary to statute and not calculated to obtain a jury truly representative of the community—a method of selection not consistent with our concepts of the democratic process.

The method of jury selection used in the District of Columbia, at the very least, presents a substantial and serious question of constitutional law which should be considered by this Court.

Respectfully submitted,

ROBERT W. KENNY,
629 South Hill Street,
Los Angeles 14, California
Attorney for Petitioner

Of Counsel:

CHARLES H. HOUSTON,
Washington, D. C.

BARTLEY C. CRUM,
New York, N. Y.

MARGOLIS AND MCTERNAN,
By Ben Margolis and William Murrish
Los Angeles, California

CHARLES J. KATZ,
Los Angeles, California

MORRIS E. COHN,
Los Angeles, California

WOLF, POPPER, ROSS AND WOLF,
By Martin Popper
New York, N. Y., and
Washington, D. C.

SAMUEL ROSENWEIN,
New York, N. Y.